STATE AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION

Economic Research Service
U.S. Department of Agriculture
Agricultural Economic Report No. 284

STATE AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION. By Fred L. Morrison and Kenneth R. Krause. Issued by Economic Research Service, U.S. Department of Agriculture. Agricultural Economic Report No. 284.

ABSTRACT

Existing State and Federal regulation of alien and corporate ownership of farmland and operation of farms in the United States is examined. Few States have substantial regulation of alien investment in real estate, and even in these States, constitutional and practical limitations blunt its effectiveness. There is no generally applicable Federal regulation of alien investment, although some Federal laws limit sale or lease of Federal property to aliens and other laws restrict dealings with hostile aliens. Six States have substantial limitations on corporate ownership of farmland or involvement in farming operations. There are no Federal laws in this area.

Key Words: Alien, Corporation, Foreign, Landowners, Real estate.

Washington, D.C. 20250 May 1975

PREFACE

There is increasing interest in alien and corporate investment in farmland and involvement in agricultural production operations. This report seeks to identify existing legal regulation of such investment and operations to aid in the making of policy decisions. Legislation and judicial decisions after June 30, 1974, have not been examined. No opinions are expressed regarding the desirability of present or future regulations.

This report was prepared under the auspices of the Economic Research Service (ERS), U.S. Department of Agriculture. It was facilitated by a cooperative research agreement between ERS and the University of Minnesota, and by a contract between ERS and the first author.

ACKNOWLEDGMENTS

The authors extend special thanks to Mr. Barrett Colombo, a third-year law student at the University of Minnesota Law School, for assistance in legal research.

We also wish to acknowledge the assistance in planning given by Dr. Dale Dahl, Professor, Dr. W. B. Sundquist, Head, and Mrs. Margaret Harmon, Executive Secretary, Department of Agricultural and Applied Economics, University of Minnesota, St. Paul, Minnesota. We also wish to thank Mr. William Scofield of the Economic Research Service, for assistance in preparation of a question relating to corporate farming. For their advice and review throughout the course of the study, we thank Dr. Neil Harl, Department of Economics, Iowa State University, Dr. Don Levi, Department of Agricultural Economics, Texas A. and M. University, Mr. Fred Woods, ERS, and Dr. George Irwin, ERS.

CONTENTS

	Page
SUMMARY	iv
I. INTRODUCTION	1
Objectives	3
Restrictions on Alien Investment	3
Restrictions on Corporate Investment	4
Level of Future Legislative Consideration	4
Methodology	5
II. STATE RESTRICTIONS ON ALIEN LAND OWNERSHIP	6
Alien Owners	7
Ownership Interests	8
Property Interests	9
Leasehold Interests	10
Interests Not Involving Ownership	10
Mineral Interests	11
History of Restrictions on Alien Land Ownership	13
The Common Law	13
Immigration	14
Exclusion of Orientals	14
Present State Restrictions	15
General Prohibitions and Exceptions	15
Other Major Restrictions	19
Minor Restrictions	19
State Property	20
Inheritance Rights	20
Alien Corporate Investment	21
Limitations on State Regulation of Alien Ownership	23
Constitutional Limitations	24
Contrary Federal Statutes	30
Limitations Imposed by Treaty	31
Practical Obstacles to State Enforcement	34
Effectiveness of State Restrictions	36

Page

III. FEDERAL LIMITATIONS ON ALIEN OWNERSHIP..... 38
Laws Applying to All Foreign Property and Investments..... 38
Laws and Regulations Applying to Public Lands.... 40
Grazing Permits..... 40
Mineral Leases and Permits..... 41
Constitutionality of Federal Laws..... 42

IV. RESTRICTIONS ON CORPORATIONS..... 44
The Corporate Form of Ownership..... 45
Advantages and Disadvantages of Corporate Ownership..... 47
Present State Restrictions..... 48
Corporation Laws..... 48
Corporate Farming Laws..... 51
Limitations on State Regulation of Corporations.. 55
Constitutional Limitations..... 55
Practical Limitations..... 56
Effectiveness of State Restrictions..... 57

V. LEGISLATION--STATE OR FEDERAL?..... 59
Control of Alien Investment..... 59
Control of Corporate Investment..... 61

REFERENCES..... 62

APPENDIX A: Research Methods..... 71

APPENDIX B: State Restrictions on Alien and Corporate Ownership of Real Estate..... 73

APPENDIX C: Major Provisions of Treaties Affecting the Right of Aliens to Own Real Estate..... 87

APPENDIX D: Corporate Farming Statutes..... 95

SUMMARY

State statutes restricting alien ownership of farm real estate range from those virtually prohibiting alien investment to those imposing only minor restrictions which would probably not deter a prudent investor. In seven States, statutes prohibit almost all alien investment in real estate. In five other States, substantial acreage or other restrictions limit alien ownership. In many States, regulations are only minor. Some States also restrict ownership of land by alien-controlled corporations, although in other States the restrictions on aliens can be avoided by creating a local corporate shell to hold title to the property.

Two other kinds of restrictions also have an impact on aliens. The inheritance laws of some States present special obstacles to inheritance by some aliens. Other laws limit the sale or lease of State property to citizens.

Practical considerations are the most significant barriers to enforcement of anti-alien statutes. An alien investor can usually legally avoid the effect of the statutes through the use of the corporate form of ownership or through partnerships, trusts, and other devices. An alien interested in securing farm production can do the same by contracting for the output of farmers for future years.

Alien governments, as well as alien individuals and corporations, can probably purchase land in most States. For business and political reasons, they may choose to insulate this investment by placing it in the name of a corporation wholly owned by their government. In any event, governmental status would not appear to immunize such a corporation from legal responsibility for its commercial activities.

In addition to these practical obstacles, limitations on alien land ownership are imposed by the U.S. Constitution and by Federal laws. The Constitution contains two substantial impediments to State regulation of alien activities. The foreign relations power of the President and the Congress is exclusive, so direct involvement by a State in foreign relations is forbidden. Explicit anti-alien legislation might be interpreted to violate

this prohibition. Also, the equal protection clause of the Fourteenth Amendment forbids a State to discriminate against any person within its jurisdiction.

Federal law applies only in certain limited cases. The Alien Property Control procedures apply only to enemy aliens in time of war. Foreign Assets Control Regulations apply to a broader spectrum of countries which are in some sense hostile to the United States, but would not appear to deter those foreign nations likely to become investors. Other Federal laws apply to grazing and mineral leases and to the disposition of other Federal property. The equal protection clause of the Constitution has been interpreted to apply to Federal as well as State laws and regulations.

State statutes regulating corporate investment in agricultural real estate and corporate involvement in agricultural operations center in six States in the Great Plains and Upper Midwest. The legislation focuses both on ownership of farmland and on engaging in farming operations.

In each State there is a statutory definition of "farming", usually involving grain, cattle, and dairy operations. Each of these States allows a series of exceptions, usually phrased to permit certain other corporations to engage in farming while excluding conglomerates and publicly held corporations.

The statutes are aimed at preserving the "family farm" as the dominant economic unit. They are a response to a perceived local economic situation. This is illustrated by the common agricultural base of the States which have enacted such laws.

The primary impact of State statutes controlling corporate farming is to exclude major agribusinesses and conglomerates from direct farm operations. They may have an incidental impact on alien investors, who may prefer to invest in the corporate form.

A legal conclusion is drawn that proposals for new legislation to regulate alien investment in agricultural real estate should be considered by Congress rather than by State legislatures, both because of the impact on foreign relations and because of practical problems involved. In contrast, proposed new legislation that may be advanced to regulate corporate farming activities might properly be considered either at the State or Federal level.

STATE AND FEDERAL LEGAL REGULATION OF ALIEN AND CORPORATE LAND OWNERSHIP AND FARM OPERATION

by Fred L. Morrison and Kenneth R. Krause a/

I. INTRODUCTION

This report focuses on two questions of land law which relate to agriculture--ownership of real estate by aliens and ownership and operation of farms by corporations.

Chapter II discusses State legislation restricting alien land ownership. Chapter III deals with Federal laws on the same subject.

Chapter IV examines State laws which limit corporate ownership of farm real estate and corporate involvement in farming activities.

Chapter V looks at whether further legislation in these areas should originate at the State or Federal level.

Economic events of the past few years, and particularly those of the past year, have focused attention on foreign investment in the United States. One interest and concern is related to increased world demand for food and fiber commodities and energy resources. Some nations may have stepped up investment in the United States in an effort to facilitate procurement of raw and processed

a/ Professor of Law, University of Minnesota, Minneapolis, Minn., and Agricultural Economist, National Economic Analysis Division, Economic Research Service, U.S. Department of Agriculture, Washington, D.C., respectively.

food and fiber. Such investment is apparently made to optimize procurement for specific uses but may include other investment objectives such as current rates of return, hedges against inflation, and expected capital appreciation.

A second interest and concern is related to the large amounts of money that certain oil-exporting nations have and will have to invest over and above the investment dollars that their own countries can absorb in the foreseeable future. There are many short and long-term investment, loan, and grant opportunities in the world for the oil money. Within the United States alone investment and loan opportunities are almost infinite, including agriculture, food and fiber industries, energy industries, and agricultural finance. Since the amounts of the excess oil money are so large, some of the traditional investments such as typical family size farms are probably not attractive unless assets can be combined to require larger amounts of money.

These two concerns, procurement pressures and the availability of large amounts of money, raise questions about what American law permits in the way of alien investment in farm and mineral assets. Knowledge of legal restrictions is a prerequisite to analysis, projection, or interpretation of possible and likely investment trends. For instance, if a valid State law prohibits an alien from owning or leasing more than a few acres of farm or mineral lands, alien investment activity in farm or mineral lands would not be projected for that State.

A number of bills[1] to regulate alien investment have been considered by Congress and by State legislatures over the past year.[b/] In 1974, Congress enacted the Foreign Investment Study Act,[2] which commands a thorough examination of the issue of alien investment. This report was begun before enactment of that law, because of a continuing interest in these problems.

Legal regulation of corporate and of alien investment is closely related, since alien investment can take place through corporate, as well as individual, purchase of real estate. Alien investors may prefer to invest in the corporate form since large sums of money can be invested at substantial distances.

This report examines present Federal laws of the United States and the laws of the 50 States restricting the ownership of

---

b/ Superscript numbers indicate references, which will be found at the end of the text, p. 62.

agricultural real estate by aliens and by corporations. It describes present laws and the constitutional and practical limitations on them but does not make any policy recommendations for or against further legislation in either of the two fields.

Objectives

The objective of this report is to provide a comprehensive review of State and Federal law regarding alien and corporate ownership of farm real estate and operation of farm enterprises in the United States.

It does not provide data on the quantity of present foreign investment in agricultural land in the United States. Nor does it examine the foreign and domestic economic and political impacts of potential legislative choices. The purpose of this report is much more limited--to describe the existing laws. In describing those laws, however, their effectiveness in accomplishing their own stated objectives is considered. No law is really effective if it contains loopholes which permit easy avoidance.

Restrictions on Alien Investment

Restrictions on alien investment activity are of two kinds. Some regulations focus directly on the foreignness of the investor. The fact that a landowner is an alien or an alien corporation may subject him to both Federal and State regulation. Other regulations focus on the activity in question and the form of operation. Thus, in some States corporations may be prohibited from owning land or from engaging in agricultural occupations.

Chapter II of this study centers on State regulations which apply to alien investors because of their citizenship. The most significant of these are laws which restrict the right of aliens to own or lease land. Since land law is basically a matter for State legislation, the laws of all 50 States are examined on this question. There are Federal laws as well, dealing both with alien-owned property generally and with foreign purchase or use of public lands. These Federal regulations are discussed in Chapter III.

State and Federal laws are subject to several kinds of restrictions. The U.S. Constitution may substantially limit the scope of permissible State legislation. Treaties between the United States and other nations, as well as executive agreements, may also override conflicting State laws. Finally, legislation

has practical limitations. If a mere conveyancing device or the creation of a corporation can avoid a law prohibiting alien ownership, anyone who can afford competent counsel (and major alien investors certainly can do so) can lawfully avoid the consequences of that law. The efficacy of State and Federal regulations must be judged in light of all of these limitations. Each of these parts contains a discussion of these factors.

Restrictions on Corporate Investment

Chapter IV centers on another aspect of agricultural operations, the control of corporate land ownership and corporate involvement in agricultural operations. Six States have enacted legislation which prohibits certain corporations from owning farmland or from becoming directly involved in the operation of farms. This legislation is intended to protect a local concept of the "family farm" as an economic unit.

The constitutional validity and effectiveness of this legislation is also examined. The laws in these six States appear to exclude certain corporations with diversified operations from extending their interests to the production of farm commodities. They do not usually prohibit farmers from forming family farm corporations, nor do they commonly exclude other small corporations from farming. Since aliens may prefer to use the corporate form of investment for a number of reasons, exclusion of corporations may have a particular impact on their operations.

Level of Future Legislative Consideration

Chapter V of this report looks at the governmental levels, Federal or State, at which further legislative examination of these problems may properly take place, given the limitations which the U.S. Constitution imposes both on the Congress and on the State legislatures. In suggesting that further consideration of legislation take place at one level or the other, we are not suggesting that any particular new law be considered or adopted.

Methodology

Preparation of this report involved two steps. The authors relied in part on responses to a questionnaire sent to the attorneys general of the 50 States. They also engaged in independent legal research, with the assistance of a law student. The methodology is described in greater detail in appendix A.

II. STATE RESTRICTIONS ON ALIEN LAND OWNERSHIP

Seven States have laws prohibiting alien investment in real estate within their borders. Five other States have statutes which limit alien landholding so severely as to virtually exclude any serious investment. A number of States have other restrictions which have a lesser impact on investment, including restrictions on inheritance rights.

None of these State statutes can effectively and totally exclude all alien investment. The State laws themselves are subject to constitutional challenges under the equal protection clause, the foreign relations power, and the supremacy clause of the U.S. Constitution. Treaty obligations of the United States further limit their effectiveness.

Practical considerations are the most significant factors, however. Through the use of corporations, partnerships, and trusts, an alien investor may be able to avoid the impact of most State limitations.

The most direct restriction on alien investment in agricultural land is, of course, one which singles out the alien on the basis of his nationality and then prohibits his ownership of land. For that reason we turn first to those restrictions in which "alienage" or "foreignness" is the applicable criterion. Other restrictions, such as prohibitions on corporate ownership, may impinge much more on the potential foreign owner. They are mentioned here but discussed in greater detail in Chapter IV of this report, since they also affect domestic investors.

Throughout this report, the word "alien," rather than the common synonym "foreigner," is used to describe a person who is not a citizen of the United States, to give legal precision to the discussion. Although "foreign" and "alien" are used as equivalents in contemporary speech, the word "foreign" has an additional legal meaning. In the law of corporations, it may mean a corporation from outside of a particular State, as well as a corporation from outside of the United States as a whole.

Both Federal and State laws can have an impact on alien investment in land. Traditionally, State law has been more important, because the establishment and delimitation of property rights have been matters for State legislation. It is thus not surprising that there are many different restrictions on alien ownership.

The State restrictions examined in this part of the report are limitations on land ownership. Except as specifically indicated, it makes no difference whether the land is being used for farming, for residences, or for factories. Since land is the foundation of agricultural production, restrictions on land ownership have their most substantial impact there.

Before we look at specific State laws, it is important to consider three preliminary questions: (1) Who are the alien owners? (2) What kinds of "ownership" may aliens have? (3) What historical factors have influenced the development of American law relating to alien ownership of property? The present state of the law may be properly examined only from the historical perspective.

Alien Owners

"Alien owners" is not a simple and uniform category. For example, foreign governments may wish to invest in American real estate, either directly or through a public corporation. Alien corporations and individuals may seek American real estate as an investment, for agricultural production, or merely to house a local commercial branch. An alien working in the United States might want to buy real estate for residential purposes.

Some of these types of owners present special problems. For example, a foreign government which purchases real estate or mineral rights in its own name might seek to interpose the doctrine of sovereign immunity to protect itself from local taxation, from local regulation of the activities on the property in question, or from jurisdiction in the domestic courts. Although the United States used to grant total and absolute immunity to foreign nations which were pursuing commercial activities in this country,[3] the Federal Government now applies a more restricted view of sovereign immunity. Under this doctrine, first articulated in a letter written by Jack B. Tate, the Acting Legal Adviser of the Department of State in 1952,[4] and since approved and elaborated by the courts,[5] a foreign state has sovereign immunity only for

its governmental and diplomatic activities, not for its commercial, business, or investment activities. Federal legislation may clarify this distinction in the near future.[6]

Most of the case law on this subject has involved commercial trading or shipping ventures, but the same rules would seem to apply in the instance of other business or investment purchases. Of course, sovereign immunity would still apply in the case of diplomatic or consular property.[7]

Problems involving sovereign immunity should not arise frequently, since foreign governments may prefer to invest through corporate entities in order to differentiate their commercial from their governmental activities. This method would also shield their investments from any adverse publicity associated with their public policies and, possibly, from potential litigation unrelated to the investment itself.[8]

Alien corporate investment is another category, but identification of the alien corporation may be a more difficult problem. Is the nationality of a corporation to be determined by the country where its charter or articles of incorporation were issued, or by the country in which it maintains its principal office, or by the country in which a majority of its shares are held? Traditionally the law has identified a company with the country in which its charter or articles of incorporation were issued, but this is a highly artificial notion. Aliens can freely obtain corporate charters in most States, but this does not domesticate their activities in any realistic sense. Any attempt to identify a corporation by nationality of share owners runs into severe practical difficulties. For instance, it is often difficult to identify real shareholders.

In examining the ownership rights of individual aliens, one must take account of a number of variations. Aliens who are residents of the United States present a particular problem. They may have a status which permits them to remain permanently without becoming citizens. They are aliens and they may invest, yet they are not commonly thought of as "alien investors." Statutes must be examined with their particular status in mind.

Ownership Interests

Alien ownership of lands ranges from direct ownership of a freehold interest by a foreigner (the simplest, most direct form of control) to indirect control of agricultural operations through

production contracts which do not involve property rights to the land in the usual sense.

Property Interests

The most direct form of alien investment in land is simple and outright ownership by an alien individual. This may be ownership of a freehold or of a lesser interest, like leasehold interests. These ownership interests may be acquired either by purchase or gift (involving action by the party) or by inheritance (by which the interest passed to the alien from the estate of another person). The distinction between purchase and inheritance is important in the current law of some States.

Second, less direct ownership and control may be exercised through trusts or other equitable ownerships. Under a trust arrangement, an alien might designate a citizen or a company to hold the land as trustee. Such a trustee would be required to render the profits of the land to the alien. The trustee holds legal title to the land and has control over it, but the alien retains the beneficial interest. Some restrictions on alien ownership may be avoided by trust arrangements. Brokers, banks, and trust companies may hold land for the beneficiaries under such trust and agency doctrines.

A third form of alien ownership may take place through corporate investment. The alien may purchase stock in a corporation which owns or buys land. The corporation itself may be a large conglomerate, or a small corporation organized by the individual alien for the exclusive purpose of owning this parcel of land. The corporation may be organized under the laws of the State in which the land is situated or under the laws of another State in the United States, or it may be an alien entity itself. For most nonresident aliens corporate investment is probably the most common form of land investment, since investment of relatively large sums of money at substantial distances may make the administrative advantages of the corporate form particularly attractive. Corporate organization may also facilitate the pooling of investments by several investors.

Finally, a partnership as an entity may own land under the Uniform Partnership Act, in effect in 46 States.[9] The exact language of the act and its interpretation varies from State to State, but all of these laws follow a general pattern. Individual partners have interests in the partnership. The partner is a co-owner of the partnership property.[10] There are two basic types

of partnership. Under the usual type, each partner is entitled to a share of the profits of the business and is liable for the losses which may be incurred. Under a limited partnership, one partner assumes general liability, others participate only to the extent set forth in the partnership documents.[11] Both types of partnerships are especially attractive in businesses with large initial depreciation or deductible expenses, since deductions may be "passed through" to the individual partners to offset other taxable income. If a partnership which is a cash basis taxpayer has a farming operation, it may qualify as a "farmer" under the Federal income tax laws and be permitted to use farm losses to offset nonfarm income. They are particularly used in depreciable real estate (such as office buildings or apartments) and in mineral development.

Leasehold Interests

One may use and occupy land under a lease or rental agreement, but not own the land. A lease is an agreement which gives the lessee rights to the land for a limited period. Some States prohibit excessively long leases of agricultural land, although long-term leases are common in other areas.

A leasehold interest is technically an interest in the land. Thus restrictions on holding interests in land would apply to leases, as well as to arrangements involving fuller ownership. The leasehold was traditionally classified as a lesser interest than real estate, but more of an interest than a mere personal or contractual right. Thus a lessee will continue to hold rights, even if the landowner sells the land. A lessee may sublet or assign his rights, unless the lease expressly prohibits this.

Agricultural tenancies from year to year are common in some areas. They are related to leasehold interests, but either the landowner or the tenant may terminate the arrangement by notice at a stated time each year.

Interests Not Involving Ownership

Effective control of the agricultural or mineral production of property may also be taken without direct ownership of land. Through the use of contracts one party may virtually dictate the output of the property, while nominal ownership remains in another party. For example, a purchaser may acquire a contractual right to all the crops a farmer produces from a certain parcel of land

over a period of several years. Technically, this is a contractual right, and not a property right, so it would not fall under usual bans on alien ownership. There is evidence that this kind of arrangement is being undertaken by some alien contractors with respect to certain commodities.

Another form of alien use of agricultural land which does not involve outright ownership is the use of governmental land under special permits, such as grazing permits or mineral leases. In some areas of the West, ranching is impractical unless ranchers can obtain grazing permits for use of Federal or State land during part of the year.

These forms of ownership may also be present in combination. For example, aliens may own a majority of the shares of a domestic corporation. The corporation may own land, lease land, and seek Government grazing permits.

Mineral Interests

Some investors have a particular interest in purchasing the minerals under the land, and not the surface of the land itself. For them, the potential future production of minerals has greater attraction than the agricultural production or other uses to which the surface may be put. Minerals include a broad spectrum of items, ranging from coal and iron ore through oil and gas.[12]

In most States a "mineral interest" may be created in land.[13] If such an interest is to be created, the surface rights will pass to one person, while the right to develop the minerals under the land may pass to another. Although it is not a technically correct statement, it is a fair approximation to say that after such a severance, one person owns the surface rights, while another owns the minerals underneath. In actual fact, the relationship between them is much more complicated, including such factors as limited rights to enter the surface to gain access to the minerals, or the right of the surface owner to be free from subsidence caused by removal of the minerals.

Although State laws vary, mineral interests are commonly treated as an interest in real estate. In some States they are directly classified as real estate, while in others they are treated as a special category. Commonly, however, the rules respecting real estate and land ownership apply to them.[14] Thus, in most cases, restrictions on the ownership of land or of real pro-

perty interests would probably apply equally to the ownership of mineral interests.

In the case of petroleum products, the landowner (or some entrepreneur who has purchased mineral interests) owns the basic mineral interest.[15] He may decide, however, not to produce oil or gas, but lease this right to a producing company. In return for this lease he receives a royalty, just as one who leases a house receives rent. The royalty may be calculated on the basis of the amount of production. The producing company receives any profit from the production and sale of petroleum, after payment of expenses and royalties. The production company does not own the mineral interest--it has only a right under the lease contract to produce oil from the land for a certain fee. The production company's right is thus one step further removed from ownership of land or the possession of a recognized legal interest in land.

In other cases, ownership of both the surface rights and the mineral rights may be necessary for effective mineral production. Strip mining or open pit mining require surface ownership, since the surface is virtually destroyed in the process. In contrast, the proprietors of a deep shaft mine need surface rights only at the minehead.

In some areas, the State government or the U.S. Government reserved to itself mineral interest in land when it disposed of surface rights to homesteaders or purchasers. In other areas, State or Federal governments permit exploration of their lands for minerals under certain conditions. Normally, one prospecting such lands will receive only a lease, not a full mineral interest, from the government in question. Application for these mineral rights is separate from the rules regarding purchase of private land or private mineral interests, since the government is not only setting the rules for the transaction but is also one of the parties to the agreement. Thus, some States will permit aliens to own property freely, but will not sell State lands to them nor grant them State mineral leases. The Federal Government has similar restrictions.

Finally, the mineral producer is subject to laws and regulations controlling and organizing production. Thus, law may require unitization, the pooling of neighboring interests so that sufficient area may be accumulated to permit reasonable production. It may also limit the daily production of individual wells, under a system of proration. These doctrines (and many others which apply to mineral production) do not directly affect the property

rights of the landowner, but they may affect the profitability of his investment.

History of Restrictions on Alien Land Ownership

The development of modern American restrictions on alien ownership of agricultural land is entwined with historical developments. The first of these is the gradual evolution of the common law from a feudal system of land tenure to the modern system of real estate holding. The second is the peculiar role of immigrant farmers in the economic development of the United States. The third is the discrimination against Orientals, which prevailed in part of the Nation during the first half of this century.

The Common Law

Land law in most States is derived directly or indirectly from English common law, which originated in the feudal period. Agricultural land was then the chief asset in the community. Land, however, could not be "owned" as we think of that term today. It could be "held" in a feudal relationship between a lord and the tenant of the land. The lord granted the tenant the use of the land and the tenant, in turn, promised certain services to the lord. The relationship was continuing in that the tenant's heir would succeed him. In the earliest period, a tenant could subinfeudate, that is, he could himself parcel out portions of his land to subtenants in return for service from them.[16]

The feudal landholding system was based on personal relationships. Lord and tenant were bound together by their oaths. In such a system, an alien might not hold land, since his very alienage made his oath suspect. In case of military conflict between the lord of his manor and the nation or principality of his citizenship, he would be subject to double and conflicting obligations. Certainly he could not inherit land, for an alien heir owed no fealty to the king.

By the eighteenth century, English law provided that an alien could not inherit land, but he could acquire land by purchase.[17] Aliens were not allowed to inherit land there until 1870.[18] Modern law in the United States is based on this history,[19] but it no longer reflects all of the rules. Nevertheless rules which arose under the feudal system have persisted long after their original justifications disappeared.

Immigration

Aliens were permitted to own land earlier in the United States than in England because of immigration. Large segments of the Nation were settled by immigrant farmers. Both statutory developments and the evolution of common-law doctrines permitted these immigrants to hold land, even before they acquired U.S. citizenship. In some cases all restrictions on alien ownership were withdrawn, while in other cases more narrowly drafted statutes permitted resident aliens, or those who were seeking citizenship, to own land.[20]

Thus, the historical background within which we are working started from the presumption that alien ownership was prohibited, unless expressly permitted by statute. In the course of the nineteenth century, this presumption was reversed. Alien ownership was commonly assumed to be permitted, except in so far as statutes continued the prohibition.[21] The historical background remains important, since cases and statutes must be read in this light.

Exclusion of Orientals

The third historical development was the exclusion of selected aliens from land ownership, based largely on racial discrimination. A number of west coast States passed alien land laws in the 1920's. These laws excluded Orientals, and in particular Japanese, from acquiring land. These State laws were usually phrased to prohibit land ownership by "aliens ineligible for citizenship." Immigration laws excluded only Orientals from citizenship, so these statutes were, in fact, a disguised form of racial discrimination. In a series of cases in 1923, the U.S. Supreme Court upheld these restrictions.[22] But in 1948, the Supreme Court reversed one escheat judgment on a related basis[23] and several of the justices cast doubt on the continuing validity of the State alien land laws. The Supreme Court then struck down the "eligibility for citizenship" test in another context.[24]

Before the U.S. Supreme Court could further act on the alien land laws, the State supreme courts in California and Oregon held the laws unconstitutional.[25] In both cases, the State courts found the statutes to be veiled attempts to discriminate on the basis of race, and found the laws to violate the equal protection and due process clauses of the Fourteenth Amendment.[26] The

California legislature repealed the statutes and provided cash compensation to aliens whose property had been taken in accordance with them. Other States modified or repealed their legislation, although similar laws remain on the books in several States.

With this historical background, we may now turn to look at the kinds of restrictions which States have imposed.

Present State Restrictions

Since land law is basically State law, we look first to the legislation and judicial decisions of the 50 States for restrictions on alien ownership. The State laws tend to fall into general types, although there are many special provisions. In 21 States there are no restrictions on alien ownership. In all of the other States, there are some restrictions on alien ownership. Table 1 indicates the broad classes into which the State legislation falls. Figures 1, 2, and 3 show most of this information on maps of the United States. The discussion which follows focuses on these broad types of legislation, rather than on the particular rules of any one State. Appendix B summarizes the laws of each State, with references to applicable statutory material or judicial decisions. This report cannot, of course, give an exhaustive legal opinion on the status of the laws and judicial decisions of each individual State.

General Prohibitions and Exceptions

The most comprehensive, and most common, form of State restriction is a general prohibition on alien ownership of land. Seven States forbid aliens to own land--Connecticut, Indiana, Kentucky, Mississippi, Nebraska, New Hampshire, and Oklahoma (table 1, col. 1 and fig. 1). In every instance there is some exception. Many States which prohibit alien ownership permit resident aliens to own land. (For details of the laws of each State, see app. B.) Other States permit aliens who have declared their intent to become citizens to own land. Nebraska prohibits aliens from owning land more than 3 miles beyond city boundaries. The general effect of the regulations is to prohibit the individual alien investor who is living abroad from purchasing agricultural property in his own name.

Some of these States permit resident aliens to own land. In some cases, the alien must reside within the particular State; in

Table 1--State law restrictions on alien and corporate ownership of land

State	Restrictions on alien ownership				Special restriction on sale of State lands	Restriction on inheritance by aliens	Restrictions on corporate ownership	
	General prohibition (1)	Substantial restriction (2)	Minor restriction (3)	None (4)	(5)	(6)	Alien corporations only (7)	All corporations (8)
Alabama				X				
Alaska				X	X			
Arizona			X		X		X	
Arkansas				X				
California				X		X		
Colorado				X				
Connecticut	X					X		
Delaware				X				
Florida				X				
Georgia			X					
Hawaii			X		X			
Idaho				X	X			
Illinois		X						
Indiana	X							
Iowa		X				X	X	
Kansas				X		X		X
Kentucky	X					X		
Louisiana				X				
Maine				X				
Maryland			X					
Massachusetts				X		X		
Michigan				X				
Minnesota		X					X	X
Mississippi	X							
Missouri				X				
Montana				X		X		
Nebraska	X					X	X	X
Nevada				X				
New Hampshire	X							
New Jersey			X			X		
New Mexico				X				
New York				X		X	X	X
North Carolina				X		X		
North Dakota				X				X
Ohio				X				
Oklahoma	X					X		X
Oregon				X	X			
Pennsylvania		X						

Continued

Table 1--State law restrictions on alien and corporate ownership of land--continued

State	Restrictions on alien ownership				Special restriction on sale of State lands	Restriction on inheritance by aliens	Restrictions on corporate ownership	
	General prohibition (1)	Substantial restriction (2)	Minor restriction (3)	None (4)	(5)	(6)	Alien corporations only (7)	All corporations (8)
Rhode Island				X				
South Carolina			X				X	
South Dakota				X				X
Tennessee				X				
Texas				X				X
Utah				X				
Virginia			X					
Vermont				X				
Washington				X				
West Virginia				X				X
Wisconsin		X				X	X	X
Wyoming			X			X		

Source: Appendix B.

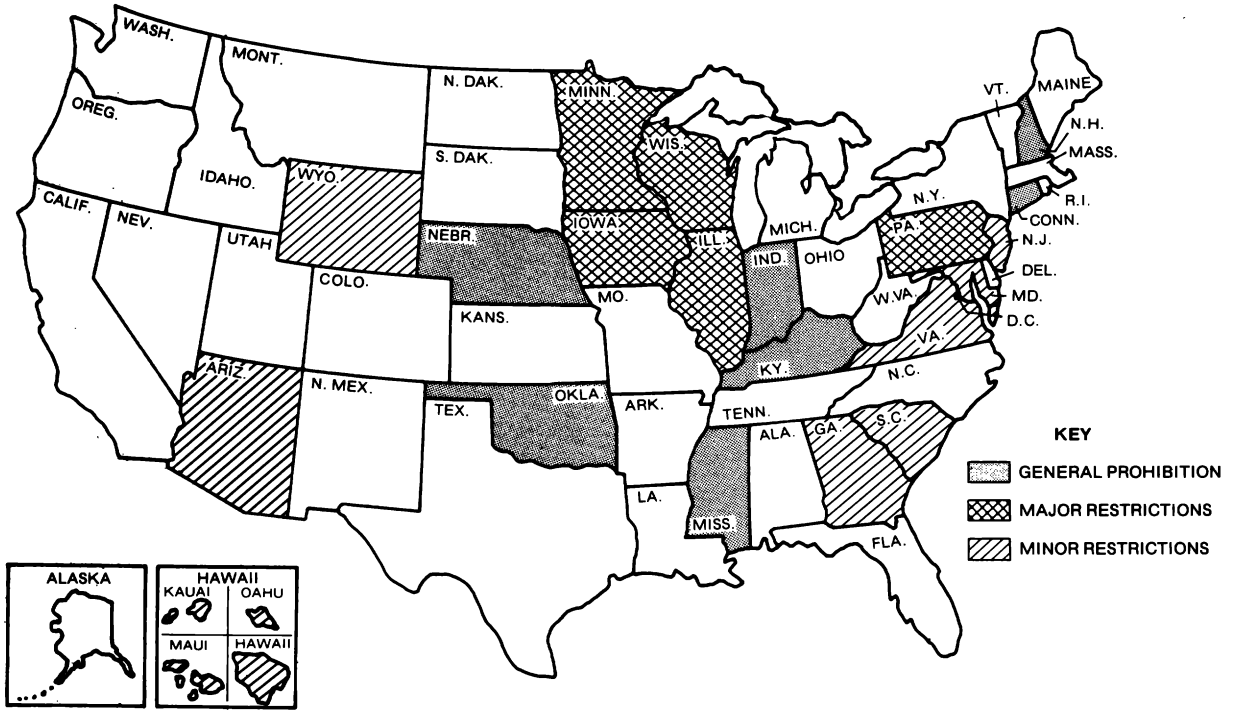

Figure 1

others , residence anywhere in the United States will suffice. Some are not specific about the kind of residence required. The Immigration and Naturalization Service issues a "permanent resident" visa to certain classes of aliens permitting the alien to remain in the United States without renewing his visa periodically. Possession of such a visa, coupled with actual presence in the United States, might be considered a criterion for establishing residence.

Other of these States permit aliens who have declared their intention to become citizens to own land. Such declaration is the first step in the process of naturalization of an immigrant. Such individuals are all residents, since residence is required for citizenship. But some resident aliens are not seeking citizenship and thus could not hold land in these States.

Most statutes limiting alien land ownership can be traced to the nineteenth century. In some instances they reflected a liberalization of the preexisting exclusion of aliens from ownership or inheritance rights, through legislation which clearly established the equal rights of immigrant aliens to own land. In

other instances, they may have reflected a decision to exclude alien investors.[27] There was a fear in the late nineteenth century in the Plains States that foreigners, especially English noblemen, might buy up immense tracts of land and initiate a tenant farming system similar to that in England.

Other Major Restrictions

Five other States have major restrictions on alien ownership--Illinois, Iowa, Minnesota, Pennsylvania, and Wisconsin (see table 1, col. 2 and fig. 1). These limitations fall into two categories. A number of States limit the acreage which a nonresident alien can own, commonly to between 160 and 640 acres. Minnesota effectively limits ownership by nonresident aliens to about 2 acres. South Carolina, in contrast, permits an alien to own half a million acres; it has been classified as a State with only minor restrictions. Severe acreage limitations effectively prevent any major and concentrated alien investment. The dispersion of holdings necessary to comply with such restrictions might make management difficult for any alien investor.

The other restriction limits the time during which an alien may hold land. In most instances the maximum holding period is between 5 and 8 years. These numbers were probably chosen both to permit an alien who had acquired land through inheritance a reasonable time to dispose of it in a free land market and to permit an immigrant time to achieve citizenship. Time limits may serve as a substantial barrier for foreign investors, since they are thus effectively limited to leasehold interests and may not benefit from long-term gains in property values. These limits may not serve as a complete barrier, however, since a continuous process of acquisition of new leaseholds or even a continuous "rolling-over" of freehold interests would appear permissible under these laws. Furthermore, for the alien investor interested in assuring a supply of a certain commodity, a 5- or 8-year term may be reasonably consistent with his objectives.

Minor Restrictions

Several States have restrictions of very limited practical importance which would not substantially deter an alien investor (table 1, col. 3 and fig. 1). Some States exclude enemy aliens from land ownership, others require alien holders to be "friends." In either instance, the requirement is of little import for two

reasons. Modern wars are commonly undeclared, hence the opposing forces are not technically "enemies." Furthermore, the Federal Government has acted in this field, through the Trading With the Enemy Act[28] and the Alien Property Regulations.[29] These Federal regulations will control in the case of military hostilities.

A few States require that a person be "eligible for citizenship" in order to hold land. These statutes are remnants of anti-Oriental discrimination. Even if they are not unconstitutional, they have little practical effect, since the naturalization laws no longer exclude any group from citizenship. Apparently such laws have never been interpreted to require that the alien owner actually be applying for citizenship or that he satisfy such formal requirements as literacy in English or residence in the United States.

Other States have special minor restrictions. For example, Hawaii restricts sale of residential lots in development districts to citizens, but has no other restrictions on alien purchase of land.

Table 1, column 4 and figure 1 show States which have none of the above restrictions.

State Property

Several States limit to citizens the purchase of State property or the establishment of mining claims on State property. Normally, aliens actively seeking citizenship are also allowed similar rights. These restrictions are separate from and in addition to general laws limiting alien ownership of land. They are probably of minor interest to the investor, since most investment land is already in private hands and thus subject only to the investment laws. The restrictions may be important in limiting the establishment of mining rights in those States with significant mineral deposits subject to their jurisdiction. These limitations are indicated in column 5 of table 1.

Inheritance Rights

As noted above, the common law in the beginning of the nineteenth century provided that an alien could purchase and hold land, but not inherit it. Many States subsequently passed statutes permitting alien inheritance. In other States judicial decisions

accomplished the same result. A number of States, however, still restrict the right of aliens to inherit land (table 1, col. 6, and fig. 2).[30] These limitations are in addition to any general State laws restricting ownership rights of aliens.

In some instances the right of a foreign heir to inherit land is based on reciprocity. The alien can inherit in the United States only if an American can inherit in the foreign nation. This statutory reciprocity is usually part of the probate law of the State. It should be distinguished from reciprocity imposed by a treaty, by which the United States and a foreign government agree to treat each other's citizens on a like basis. This statutory reciprocity is imposed by the State, not the Federal Government. It is unilateral in the sense that there is no formal agreement between the State and the foreign government.

In other instances States have attempted a more searching inquiry into inheritance in the foreign country. They have tried to determine whether Americans can inherit, and whether the named heirs will actually benefit from the inheritance. This legislation, mostly enacted in the early 1950's, is now subject to serious constitutional challenge.[31]

Limitations on inheritance rights may be a substantial barrier to individual foreign investment. No foreign investor will comfortably consider the forfeiture or forced sale of his assets upon his death. Such limitations probably will force foreign investors to use other forms of ownership to accomplish their objectives, such as corporate ownership or the use of trusts.

Alien Corporate Investment

Few States have specific statutory provisions on alien ownership of land through use of corporations. There are probably historical reasons for this. Corporations did not become involved in land ownership in a major way until this century. Most nineteenth century corporations had only limited authority to hold real estate. Most of the anti-alien legislation was enacted in the nineteenth century, when corporate ownership was thus not thought to be a threat.

Several States have very substantial restrictions on corporate ownership of farmland (table 1, col. 8 and fig. 3). Most of these States also prohibit certain types of corporate entry into the farming business. These laws affecting all corporations

STATES WITH RESTRICTIONS ON INHERITANCE BY ALIENS

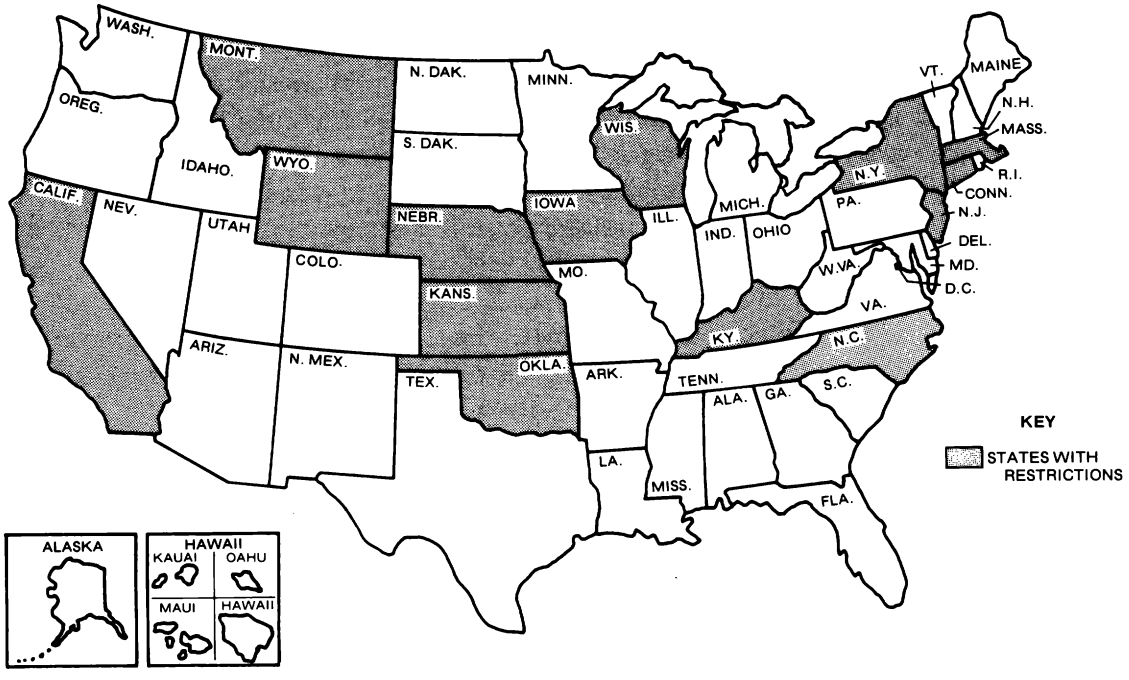

Figure 2

STATES WITH RESTRICTIONS ON CORPORATE LANDHOLDING

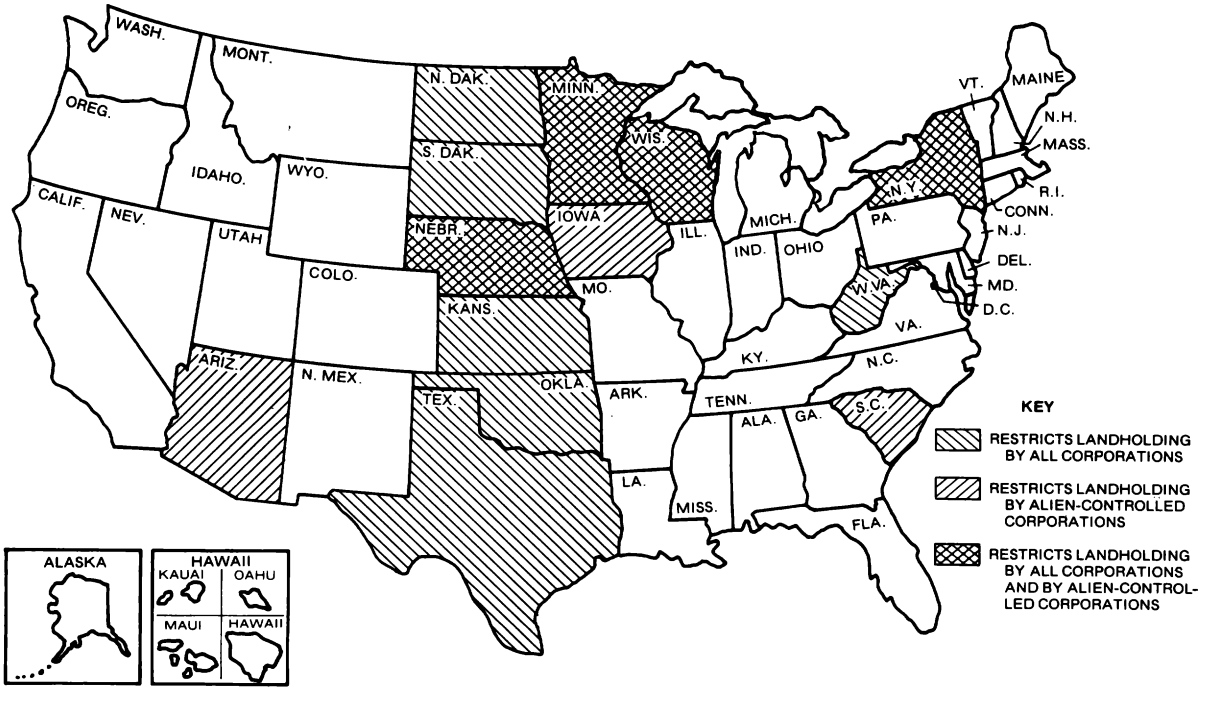

Figure 3

are the subject of Chapter IV of this report.

Some States have separate, specific provisions covering alien ownership in the corporate form (table 1, col. 7 and fig. 3). The State or nation in which a corporation is organized need not be the same as the State in which the corporation operates or the nation in which the shareholders live. For example, Germans might use a Delaware corporation to invest in California. Laws which seek to restrict alien investment through corporations must be carefully examined to discover exactly what they do--and do not--prohibit.

Some State laws restrict ownership by corporations incorporated outside of the United States. This is probably the least successful restriction, since the alien corporation or investor may simply incorporate a subsidiary somewhere in the United States. Since the process of incorporation is virtually automatic, there are no meaningful restrictions on formation of domestic subsidiaries by alien corporations or individuals. Then the subsidiary, duly incorporated in the United States (and perhaps even in the State in question), can purchase the property in compliance with the law.

Other States exclude corporations with more than a specified percentage of alien ownership or with alien directors or managers. These laws do not focus on the nominal nationality of the corporation, but on the real national affiliation of the investors. While these efforts to "pierce the corporate veil" may be successful in some instances, the establishment of intermediate corporate holding companies or nominees may make it difficult to discern the true identity and nationality of the owners.

Limitations on State Regulation of Alien Ownership

Enforcement of State laws restricting foreign investment in agricultural land is subject to three major challenges: (1) The statutes may violate Federal constitutional rules. If so, courts will hold the statute to be void. (2) The statutes may conflict with a treaty between the United States and some foreign nation. In this case, too, a State statute will be superseded by the treaty. (3) The State statute may be drawn in such a way that proper drafting of land conveyancing instruments may easily avoid the intended impact of the law. In addition, a State statute may be held unconstitutional if it violates the State constitution, a question not canvassed as part of this study.

The absence of recent reported cases of enforcement of anti-alien statutes leads to suspicion that they may not be effective in limiting alien investment. This is particularly true because alien investment has taken place in some of the States with restrictive laws. The absence of enforcement can indicate one of two situations. Either the statutes are so well known that they are customarily obeyed, or they are so well forgotten or their continuing validity is subject to such question that there have been few efforts to enforce them, even in clear cases. The latter would appear to be the more likely alternative.

Constitutional Limitations

Equal protection.--The most comprehensive restriction on State power in this field is contained in the equal protection clause of the Fourteenth Amendment. The relevant portion provides: "... nor shall any state ... deny to any person within its jurisdiction the equal protection of the laws."[32] California and Oregon courts used this clause to invalidate the racially discriminatory alien land laws.[33] Although the equal protection clause is commonly thought of as the primary constitutional doctrine in attacks on racial discrimination, its scope of operation is far broader. It protects against all forms of discrimination by States or their agencies.

Although the amendment is, by its own terms, applicable only to restrict State action, the Supreme Court has repeatedly construed other constitutional doctrines to apply equivalent limitations to the Federal Government and its agencies.[34] Thus, the same rules would apply in the District of Columbia and in Federal territories and reservations.

The important feature of the constitutional language is that equal protection of the laws applies to any person--citizen or alien--within the State's jurisdiction. Recent case law has been uniform in indicating that aliens are protected, but it has not totally clarified the position of nonresident aliens. Most of the cases have involved efforts to protect resident aliens, rather than nonresident alien investors, against discriminatory legislation. The judges have commonly spoken of "resident aliens," rather than of "aliens," although occasionally they have used the more general term.

It might seem that an alien investor, living and working in Germany or Switzerland or Saudi Arabia or Japan, is not "within the jurisdiction," and thus not protected by the language of the

constitutional provision.[35] Such a view may, however, be misleading. At least for some purposes, such as the service of civil process, the law may treat a person as constructively within any jurisdiction in which his property is located.[36] To hang the validity of a substantive exclusion of alien ownership on an argument as technical as this may be to invite invalidity. The equal protection clause has been used with increasing frequency and decreasing technicality during the past decade to eliminate official discrimination.[37] Purely technical arguments have not received much credence.

Equal protection does not, of course, require absolute equality of treatment in all respects. It requires not only the equal protection of the laws, but also "the protection of equal laws."[38] A law may, however, classify persons and apply different rules to different classes. The question then arises: Is discrimination against aliens (or against some aliens) constitutionally justified?

The Supreme Court has enunciated two tests for determining whether a classification is constitutionally valid, the "rational basis" test and the "compelling State interest" test. The validity of restrictions on alien ownership will depend on which of these two tests is used.

The usual test is the rational basis test. When it applies, the classification in a statute can be justified if there is a "rational relationship to a legitimate State interest." In a number of cases, the Supreme Court, as well as other Federal and State courts, has repeatedly held that its function is not to judge the social or political wisdom of the legislative decisions, but only the narrow one of determining whether any rational argument can be made for the classification and whether the State has an interest in the end result.[39] Clearly there is a direct relationship between the statutes and the States' purpose, the exclusion of aliens from investment in the State. Whether a State has any legitimate interest in excluding alien investment or whether this is an area in which only the Federal Government may properly act will be addressed in the next section.

Under the other test, the Supreme Court has required the existence of a compelling State interest to justify a classification. The Supreme Court has required this kind of justification when a State used a "suspect" characteristic as the basis for its classification. Classifications based on status, such as race[40] or wealth,[41] have been subjected to this more stringent standard.

It has also been applied in cases in which a government discriminated in the protection of fundamental rights. Three times in recent years the Supreme Court has found classifications which excluded aliens to be such "suspect" categories and held the State law invalid.

In Graham v. Richardson[42] the Supreme Court held that a State could not exclude resident aliens from welfare benefits. The Court found the exclusion of aliens to be "suspect," and could find no compelling public interest to justify the discrimination. As Justice Blackmun stated,

> [T]he Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.[43]

In order to reach this conclusion, the Court found it necessary to reverse a number of old precedents, similar to those used to justify the alien land laws of the 1920's.

In 1973 in Sugarman v. Dougall,[44] the Supreme Court invalidated a State statutory provision excluding aliens from all civil service appointments, reversing a long series of precedents. The Court held that State statutes which establish a blanket prohibition against the employment of aliens discriminate in a way prohibited by the U.S. Constitution.

Finally, in In Re Griffiths,[45] the Supreme Court invalidated a Connecticut requirement that lawyers be citizens of the United States. This decision ran against the common practice of most States. The Court found anti-alien laws to violate the spirit of the equal protection clause.

These cases cast substantial doubt on the validity of all legislation restricting alien activity. In order to be constitutionally valid such laws must be drafted and scrutinized with great care.

Laws using the old "eligibility for citizenship" standard are almost certainly invalid as in violation of the right to equal protection of the law, as the courts in California and Oregon have already held. Statutes which discriminate against resident aliens will also probably fall, if challenged by a proper party. A State probably will be unable to find any basis to justify discrimination against a resident alien, when it permits a nonresident

citizen to own land.

These challenges do not, however, reach the heart of the problem. Regulation of investment by nonresident aliens may not receive the same scrutiny. Such investment limitations may be characterized as "economic regulation" which attracts only the "rational basis test." Each of the three cases mentioned above dealt with aliens who were permanent residents. The courts may be more willing to treat their human rights as entitled to greater protection than the purely economic rights of investors. If so, the courts may find a carefully drafted statute not to violate this constitutional limitation.

In this context a second constitutional doctrine, due process of law, also comes into play. A State must have a legitimate public purpose for its legislation. Although early decisions on alien land laws seem to intertwine due process and equal protection doctrines,[46] due process has not received attention in later cases. Recent cases require only a rational basis to justify State action against a due process challenge,[47] a judicial standard similar to the weaker equal protection standard. The basic question here is whether a State has any interest in controlling alien ownership of land or whether this is a purely national concern in the regulation of foreign commerce and foreign relations.

Federal Power Over Foreign Relations.--The second major constitutional limitation is that which vests complete power over foreign relations in the Federal Government, to the exclusion of the States. State governments cannot intrude into Federal authority to conduct its own foreign policy. In matters of foreign relations, the Nation is a single and indivisible unit.

The characterization of the State laws is thus a matter of major consequence. If they are an intrusion into the authority of the Federal Government to conduct its relations with other nations, they will be held invalid. If, however, they are viewed as a regulation of the internal affairs of the State, which only has an incidental impact on foreign relations, they may be upheld.

In a few clear cases, the answer seems obvious. If a State attempts to single out one foreign nation for favorable or unfavorable treatment, it would appear to be conducting its own foreign policy. Thus, it would cast grave doubts on the constitutional validity of its discriminatory laws. In at least two cases, this is so. Connecticut grants an exemption from its prohibition of alien land ownership to citizens of France. Mississippi grants

the right to inherit land to citizens of Syria and Lebanon.

Two Supreme Court cases delimit the extent of exclusive Federal power over foreign relations, as it affects ownership and inheritance of land by aliens. They are Clark v. Allen,[48] decided in 1947, and Zscherning v. Miller,[49] decided in 1968.

In Clark v. Allen,[50] the issue was California's application of reciprocity rules as part of its probate law. The California statute permitted nonresident aliens to inherit certain types of property only if a reciprocal right of inheritance for Americans existed in the alien's home country. The Supreme Court characterized this inquiry into the existence of reciprocal rights as only "incidental" to the foreign relations of the United States.[51] It upheld the State law against a challenge that it infringed on the Federal Government's power to conduct foreign relations.[52] The Federal Government had argued that the State court's inquiry into foreign law might interfere with the power of the Federal Government to enter into negotiations with foreign powers. The Supreme Court, reasoning that simple inquiries into the law of foreign nations were commonplace judicial tasks, found no unconstitutional burden on Federal power.

Prompted by the decision in Clark v. Allen and by the "Cold War", a number of States, including Oregon, enacted more extensive reciprocity laws.[53] Such laws effectively excluded residents of "Iron Curtain" countries from inheritance. A potential heir had to show that an American would have reciprocal rights and that the heir would receive the benefit personally, without confiscation. Some courts cast doubt on the veracity of certificates filed by foreign diplomatic officers asserting reciprocity and reality of inheritance.

In Zscherning v. Miller,[54] the Supreme Court ended this kind of judicial inquiry into the economic and political systems of other nations. While the Court expressly refused to reconsider Clark v. Allen, and thus implicitly upheld the doctrine of simple reciprocity, it held the Oregon alien inheritance statute to be unconstitutional.

Later lower court cases have not clarified the confusion created by the simultaneous existence of the Clark and Zscherning decisions. The California courts have now held invalid the statute which was upheld in Clark.[55] They argued that the reciprocity doctrines necessarily involved some inquiry into the form of government of the other nation and the reality of inheritance

rights of persons there, so that the California law should fall under the Zscherning standard. On the other hand, courts in New York,[56] Nebraska,[57] North Carolina,[58] and Montana[59] have upheld State restrictions on alien inheritance. The Supreme Court has yet to provide further assistance in the controversy.

The cases seem to say that a State may base its inheritance laws on reciprocity, as long as its inquiries about reciprocity do not go too far or become diplomatically too sensitive. The determination of "too far" and "too sensitive" are left to later decisions. A pure and simple reciprocity statute may survive the Zscherning decision, but one which delves more deeply into foreign motivations or conduct may run afoul of the Constitution.

Reciprocity statutes are not the only ones to come within potential constitutional challenge. All State legislation which restricts alien ownership may risk invalidation under this constitutional doctrine. International economic relations are certainly a significant aspect of international relations. In a period of negative current balances of payments, it may become necessary for U.S. foreign policy to encourage net inflow of capital. State restrictions and impediments on investment would constitute an interference with foreign relations and foreign commerce.

The Supreme Court has long recognized that property rights are defined by the States.[60] This is not, however, a boundless State power. It may be subjected to closer scrutiny in the future than was the case in the past. If the purpose or effect of a new State statute is to discriminate against aliens, courts may find an interference with Federal power over foreign relations and foreign commerce.

The Constitution gives Congress the power to regulate international economic relations. It says: "The Congress shall have power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[61] Certainly foreign investment is foreign commerce. If Congress were to enact specific legislation, such Federal law would prevail over State law. But, with few exceptions, Congress has not acted. How is its silence to be interpreted? Does the absence of any explicit Congressional action mean that alien investment should be unregulated? Or does it mean that States have implicit permission to regulate such investment? The latter is probably the correct answer for two reasons. In the first place, States have traditionally regulated the terms of land ownership. In a field in which State regulation has been traditional, the silence of

Congress is usually interpreted as permission for continued State regulation, even though interstate or foreign commerce may be involved.[62] In the second place, Congress has not been totally silent. Particularly through the exercise of the treaty power, the Federal Government has, on a number of occasions, implicitly recognized and accepted the existing restrictions on alien ownership of land. It has ratified treaties which provide for the consequences of State denial of ownership to aliens. Thus, the Federal Government's silence may be taken as permissive of continuing State regulation.

The courts have sometimes striken down State laws regulating alien activities because parallel, but not contradictory, Federal legislation occupied the same field. Thus, when Pennsylvania sought to operate its own system of registration of aliens, the Supreme Court held the Federal laws completely occupied the field, leaving no scope for supplementary State laws.[63] There is, however, no comprehensive Federal law on the subject of alien ownership of land, so this restriction would not appear to apply.

Contrary Federal Statutes

Federal law prevails over State law.[64] Hence any Federal law regulating or restricting alien investment in land would override a State law on the same subject.

The most significant present Federal law is the Foreign Assets Control Regulations.[65] Other Federal law deals with enemy property[66] and with the purchase and use of Federal lands.[67] Federal laws are discussed in Chapter III of this report.

None of these Federal laws seems to override State legislation generally, although they may do so in special cases. For example, Federal law relating to sale or disposition of Federal public lands will prevail over the local State law with respect to such transactions, but the State laws will continue to be effective in all other respects.

The Alien Property Regulations, Federal regulations adopted under the Trading with the Enemy Act, place a Federal official in charge of the property of enemy aliens. These regulations probably supersede State laws prohibiting ownership of property by alien enemies.

Limitations Imposed By Treaty

Treaties, like Federal statutes and the Constitution, are the "supreme law of the land."[68] A treaty or executive agreement, ratified on behalf of the United States, will supersede any conflicting State law.[69] Treaties are formal agreements between the United States and one or more foreign nations, which are ratified with the advice and consent of the Senate. Executive agreements are agreements between the United States and some foreign power. Although an executive agreement is not subject to the constitutional requirements of Senate approval, it nevertheless has the same legal effect as a treaty.[70]

The United States has agreements with most major investing nations in the world, and with many other nations, setting forth the rights of citizens of the two countries with regard to business activities, property ownership, and other affairs when within the other country. Thus, a treaty between the United States and France will spell out the rights of French citizens and companies in the United States and the rights of American citizens and companies in France.

These treaties do not follow a single standard form. They have been negotiated at different times, when different problems of international relations were perceived. Usually the property ownership and business enterprise sections are only part of a larger package of international obligations, commonly called a "Treaty of Friendship, Navigation, and Commerce," which each participant nation undertakes. Major provisions of treaties with several selected nations are indicated in table 2. Appendix C gives the provisions of these treaties in greater detail. For specific details relating to each country, the reader is referred to the text of the individual treaty.

The treaties have a common thread of provisions, although not articulated in identical language. For the purposes of this study, only the rights of aliens and alien corporations in the United States are of concern, although reciprocal rights are commonly granted to Americans in the other nation. In general, each treaty authorizes aliens to engage in legitimate businesses within the United States. The businesses vary from treaty to treaty, but the emphasis is on manufacturing and trade.[71] The listing is usually quite detailed, but agriculture is not specifically included. Therefore, production of crops is probably beyond the

Table 2--Major provisions of treaties affecting alien ownership of land

Country	Date concluded	Rights granted by treaty				Specific U.S. reservation of right to restrict alien ownership
		Commercial activities	Lease land for commercial purposes	Form mining companies in U.S.	Inherit land	
Belgium	1961	x				x
Denmark	1951	x	x	x	x	x
France	1959	x	x			
Germany (Fed.)	1954	x				x
Iran	1955	x	x			
Italy	1948	x	x			x
Kuwait	none					
Japan	1953	x	x			x
Netherlands	1956	x	x		x	x
Norway	1928	x			x	1/
Saudi Arabia 2/	1933					
Spain	1902				x	1/
Sweden	1910				3/	
Switzerland	1850	x			x	1/
United Kingdom (also applies to Australia, Canada, and New Zealand)	1899				x	1/

1/ The treaty implicitly accepts the proposition that aliens may be excluded from land ownership.

2/ The agreement with Saudi Arabia does not set forth specific rights; rather it provides "most favored nation" treatment.

3/ This is provided through "most favored nation" provisions. A citizen of Sweden is entitled to be treated on the same basis as the most favored alien.

Source: Appendix C.

scope of the treaty rights which an alien may claim. The treaties do not, however, exclude aliens from farming; they are merely silent on the question.

These treaties also commonly authorize the leasing of property necessary for carrying on a trade or business. The treaties may thus have the incidental effect of overriding State laws in so far as aliens or alien corporations attempt to acquire land for trade or manufacturing pursuits. Dealing in agricultural commodities might be a recognized trade activity so an alien could probably acquire land for an elevator or other trade facility in accordance with the treaties.

Most of the treaties contain an explicit provision reserving to the United States the power to limit or exclude alien exploitation of land and natural resources. Although the treaties vary, there are two kinds of exceptions. One exception permits aliens to continue to hold land acquired before adoption of any new regulation. The other expressly provides for land ownership necessary to engage in the business activities spelled out under the business provisions. This reservation of the power to exclude alien ownership of land is undoubtedly a recognition of the differing State laws on this subject. The Federal Government has been most reluctant to use the treaty power to override State legislation in those fields in which States have traditionally exercised primary authority. The delimitation of property rights is apparently one of these fields.

The third set of provisions relates to inheritance rights.[72] Frequently treaties provide that inheritance rights will be reciprocal, or that aliens of the treaty nation will be treated on the same basis as citizens in the distribution of estates. Even here the primacy (although not the supremacy) of State law is recognized. The treaties commonly recognize that the States may exclude alien ownership of land. In such cases, the treaties commonly provide a period of time, such as 5 years, within which the alien can dispose of property without being pressed into a "forced sale" in which he might not recover its full value.

Thus treaties would not appear to create any substantial barrier to State regulation of alien investment in agricultural land. They may have an incidental impact on some of the more stringent State legislation which totally excludes aliens, since an alien may have a treaty right to acquire land for trade or commercial purposes. This would not have a direct impact on investment in agricultural lands, however. Nor do the treaties

establish any barrier to State or Federal legislation designed to encourage foreign investment. Indeed, the lowering of any barriers to investment would be in accordance with their general aim.

Finally, several of the treaties have "most-favored-nation" clauses, which entitle an alien from that nation to be treated on the same basis as the most favored aliens in the United States. To define the scope of each of these clauses, one would need to search all of the treaty obligations of the United States to find that clause most favorable to an alien investor with respect to some question. The beneficiary of the "most-favored-nation" clause would then be entitled to that treatment. One example should suffice. Under the executive agreement between Saudi Arabia and the United States, citizens of Saudi Arabia are entitled to "most-favored-nation" treatment in the United States. Under a treaty with Denmark, Danes are entitled to form American corporations to invest in the mining industry in the United States on the same basis as United States citizens. Saudi Arabians are entitled to the best arrangement accorded any foreigner, hence they may also invest in the mining industry. Such "most-favored-nation" clauses may be highly significant, since a careful examination of all of the international obligations of the United States may produce a number of special arrangements covering different fields of activity.

Practical Obstacles to State Enforcement

Assuming that State regulatory measures are valid on their face, there remain a number of practical obstacles to State legislation excluding aliens. These involve the identification of alien owners and legal techniques by which the rigors of State legislation can be avoided.

The first problem is identification of alien owners. Standard conveyancing practices do not ordinarily reveal the nationality of the purchasers. Since alien purchase of real estate is not common, real estate agents, conveyancing attorneys, and recorders may not be immediately aware of State statutes restricting or prohibiting such transfers. Normally sellers and buyers have no interest in upsetting the transaction, so they cannot be relied on to report violation of State law. Once conveyancing is completed, there is no occasion to inquire into the nationality of a holder. Completely overt transactions may escape the restrictions, simply because no one notices them.

The problem is compounded if the alien purchaser buys his interest through a broker or trustee, or uses the corporate or partnership form to hold land. Few States have any express provisions relating to these forms of ownership. A local broker, trustee, or nominee may purchase land on behalf of a foreign investor. The deeds may show that the broker or trustee is acting in a representative capacity and not on his own behalf, but they will not necessarily identify the investor. Similarly, a partnership or corporation may appear on its face to be principally a local operation, formed or chartered locally. Deeds will not necessarily show the alien character of a foreign-controlled but locally chartered corporation. The typical annual report filed with the State secretary of state does not inquire into the nationality of stockholders. Similarly a partnership may be able to trade under a name which does not reveal its alien character, even though State laws may require registration of the names and addresses of partners. So identifying alien owners will be a problem.

Furthermore, in the corporation cases, the individual shareholder does not have an interest in the land itself, but only an interest in the assets of the corporation. The courts have been clear that this is not an interest in real estate owned by the partnership or corporation. Since the ownership interest of the investor is not real estate, it would appear that such an interest is not an interest in land. Thus use of the corporate or partnership device would appear to legally avoid the effect of State prohibitions on alien investment, unless there is some further special provision relating to such partnership or corporate investment. A few States restrict alien corporate investment, while none restrict alien investment through partnerships.

The sanction that many of the State laws impose, total forfeiture of the land without compensation, probably deters the initiation of prosecutions, since it might seem to be too severe in the case of a purchaser who did not become aware of the State law until after the purchase had been completed. Some States, however, provide milder sanctions, such as a period during which the purchaser can dispose of the land or sale at auction.

Another factor should be considered in evaluating the effectiveness of these laws. Some States have engaged in active campaigns to attract investment, including alien investment. Restrictions on alien ownership of property may be a serious deterrent to certain forms of such investment, because of both its direct impact on economic activity and its indirect impact on alien managers or workers who may come to work in such a facility. If economic development is a State goal, State restrictions may be eased to

permit such investment. For example, at one time South Carolina limited aliens and alien corporations to ownership of 500 acres of real estate in the State.[73] As economic development became desirable, this restriction was relaxed by permitting the ownership of 500,000 acres.[74] Such a restriction is virtually meaningless.

Effectiveness of State Restrictions.

Despite constitutional limitations on their powers, State legislatures may be able to regulate foreign investment in agricultural land. The present regulations in most States, although they appear on the surface to prohibit some forms of alien ownership, are probably ineffective either because of constitutional challenges or because of practical defects. An examination of each of the major types of regulation will reveal this probability.

General Prohibitions on Alien Ownership.--The Constitution would seem to require equal treatment for resident aliens and citizens. To satisfy this constitutional requirement, State laws restricting alien investment must exempt resident aliens from their operation. The general prohibitions will also not be effective where there are overriding treaty rights. Even if the laws affect only nonresident alien investors, they may conflict with the Federal foreign relations and foreign commerce powers if they become a burden on the international relations of the United States.

The general prohibition on alien ownership is probably not practically effective unless there is parallel control on foreign control through corporations, partnerships, and trusts.

Other Major Restrictions.--Acreage and time restrictions will fall victim to the same failings as general restrictions on aliens, since resident aliens must be given equivalent rights. Treaty rights must be respected. If a legislative purpose of restriction of alien investment is to be effective, it must include adequate controls over indirect investment.

Minor Restrictions.--Most minor restrictions are virtually ineffectual. Exclusion of enemy aliens from property ownership is effective only in time of formally declared war, but most of our recent military actions have not involved such a formal declaration. The Federal laws regarding enemy property would then supersede State legislation, in any case.

Restrictions which are phrased in terms of eligibility for

citizenship are likewise ineffective, since the criteria upon which these statutes were premised have now been repealed.

The restrictions which specifically enumerate certain nations for special treatment are almost certainly in conflict with the U.S. Constitution. The consequence in such States is, however, open to question. May all aliens claim the treatment offered the favored nation, or are the citizens of the favored nation to be reduced to the rights afforded other aliens?

State Property.--Regulations affecting disposition of State property or State mineral interests are generally formulated in terms of one of the classifications mentioned above. The same restrictions apply.

Inheritance Rights.--State restrictions on alien inheritance rights remain subject to substantial constitutional challenge. In many instances international treaties will protect the rights of foreign investors. Where there is no treaty, a judicial inquiry which is too searching may run afoul of the exclusive foreign relations power of the Federal Government. There is some suggestion that an equal protection claim might also invalidate some of the more restrictive statutes.

In any event, inheritance restrictions are not likely to deter an alien investor. For him some nonpersonal form of ownership may be preferable in any instance. With such ownership, succession can be kept out of the local courts.

Alien Corporate Ownership.--Effective control of alien investment through corporations, brokers, and nominees may be the key to controlling alien investment in farm real estate. State legislation sometimes addresses itself to the mere formalities--place of incorporation, submission to the local jurisdiction, identity of directors or managers--and fails to deal with the reality of ownership and control, which is often difficult to determine. Legislation based on formalities may always be easily avoided.

III. FEDERAL LIMITATIONS ON ALIEN OWNERSHIP

Since the law of property is State law, there have been few Federal laws or regulations limiting alien ownership of real estate. The Federal laws which do exist fall into two categories.

One set of Federal laws and regulations controls the assets of enemy or hostile aliens. The Alien Property Regulations control the assets of enemy aliens in time of war. The Foreign Assets Control Regulations limit the use of property by citizens of certain named nations. Only five nations are presently subject to these controls.

The other Federal laws deal with disposition of the public domain. These restrict the award of grazing permits, mining leases and licenses, and homesteads to citizens and to certain kinds of corporations.

Like the State laws and regulations, the Federal controls must meet the standards set forth in the Constitution.

Land laws traditionally fall within the provice of States. Federal regulation of foreign ownership of land is thus usually ancillary to State regulation. Federal laws and regulations fall into two broad categories. In the first category are laws and regulations which apply to all alien property and investments. In the second category are laws and regulations which apply to the sale and use of Federal public lands.

Laws Applying to All Foreign Property and Investments

The most important Federal law restricting alien property is the Trading With The Enemy Act.[75] This law, and the regulations adopted pursuant to it, provide for the seizure and administration of the property of alien enemies. The statute itself is rather broadly worded. Two sets of regulations implement its provisions.

One set of regulations creates the Office of Alien Property in the Department of Justice.[76] This office assumes control and management of the property of alien enemies only in time of war or declared emergency.

The second set of regulations has more practical importance. Under the Foreign Assets Control Regulations,[77] all of the assets of foreign nationals of countries listed in the regulations are subject to control by the Department of the Treasury. Under the regulations the alien retains his property, but is forbidden to transact any business with respect to it, and others are forbidden to deal with him. In technical terms, the asset is "blocked." Transactions involving the property require special licenses from the Treasury Department.

At the present time, the nationals of only three countries are on the "blocked" list: North Vietnam, North Korea, and the Peoples' Republic of China.[78] Cuba[79] and Rhodesia[80] are subject to parallel regulations. The significance, however, is not in the present state of the list but in the relative ease with which blocking could be applied to any other nation by the simple administrative process of adding it to the list. No additional legislation would be required.

Of course, the U.S. Government does not impose blocking of accounts for any minor or transient cause. The brevity of the current list is ample testimony to this fact. The possibility of retaliation and the effect on the acceptability of the United States as a locale for alien investment, banking, and trade would be severe restraints on any hasty action. Indeed, the great reluctance of the United States to use its legal power to block alien assets has apparently been one reason that alien investors have looked to it in recent years.

Thus, the general Federal law does not significantly restrict alien acquisition of agricultural land, except by nationals or companies of the countries specifically listed in the Foreign Assets Control Regulations. These countries do not appear to be likely major investors in the near future in any case.

Laws and Regulations Applying to Public Lands

Although property rights are defined principally by State law, property rights on the Federal public domain are defined by the Federal Government. Federal law determines the conditions under which Federal land may be sold or otherwise acquired by individual purchasers, including who may hold grazing permits and mineral development rights.

The public land law of the United States is not fully codified. A 1968 study reported more than 2,600 separate acts of Congress relating to public lands.[81] Most affect only one tract or reservation, and many are obsolete for practical purposes.[c/] We have attempted to focus only on the most significant acts.

Grazing Permits

Permission to use Federal land is exceedingly significant in many parts of the West. In certain areas, ranchers depend on grazing permits on Federal land to provide adequate grazing land for their livestock during part of the year. Sale of a rancher's own lands to an alien investor would be substantially impeded if there could not be reasonable assurance that Federal grazing permits would be reissued.

Under the Taylor Grazing Act,[82] grazing permits may be issued only to citizens or aliens who are in the process of becoming citizens, and to certain groups, associations, and corporations. The statute itself requires only that such groups, associations, or corporations be qualified to do business within the State in question.[83] The Bureau of Land Management of the Department of the Interior has, however, promulgated regulations which require that U.S. citizens have the controlling interest in a corporation before it may obtain a grazing permit.[84]

---

c/ Homesteads were significant in the development of the United States. Homestead entries permitted individuals to enter agriculture without putting up capital for land. All of the land available for homesteading has now been claimed. Although the law is still on the books, homesteading has become virtually a thing of the past. Under the homestead laws, only a citizen could make a homestead entry on public lands (43 U.S.C. § 161; 43 C.F.R. § 2511.1).

The Forest Service of the U.S. Department of Agriculture has similarly restricted grazing permits, called "term permits", on forest land. Federal regulations permit the Chief of the Forest Service to establish eligibility criteria.[85] Under the current regulations, aliens cannot hold such permits.[86] These regulations even exclude the immigrant alien, until he has received his final citizenship papers. The regulations provide for trusts and corporations to receive such permits, but suggest that some special scrutiny be given such applicants.[87] They do not give specific standards for such scrutiny.

Mineral Leases and Permits

The United States owns vast lands in the West and considerable acreages east of the Mississippi River. In the West, the bulk of this land is in the public domain, or has been reserved from the public domain for the National Forest System. East of the Mississippi River, most of the land was acquired from private owners for the National Forest System.

Most Federally owned minerals are subject to exploration, development, and production by private investors. Minerals in National parks and monuments, on military reservations, and on lands withdrawn for reclamation, hydroelectric power development, or other purposes are usually excluded from private development.

A complex body of Federal laws governs the kinds of rights which investors may acquire. Different rules apply for different kinds of minerals, for different locations, and for different types of Federal land. For example, a special law applies to offshore oil lands.[88] Only the more significant generally applicable statutes can be mentioned here.

Citizens and aliens who have declared their intention to become citizens may appropriate and purchase lands from the public domain (or from National Forests reserved from the public domain) where "valuable minerals" are found.[89] Corporations chartered in the United States may also apparently acquire such rights, regardless of the nationality of their shareholders.[90] These laws do not apply to certain kinds of mineral deposits (such as coal and oil, which are governed by the mineral leasing laws[91]) or to lands which the United States has acquired from private parties.[92]

The Mineral Leasing Act applies to the development of coal, oil, oil shale, and a few other minerals on public domain land.[93] A similar act applies to the development of all minerals on

acquired lands.[94] In both cases, private investors are limited to leasing, rather than purchasing, the mineral rights. Only citizens, associations of citizens, and corporations chartered in the United States may acquire such leases.[95] An alien may not own stock in such a corporation if his home country does not grant like privileges to Americans.[96]

Geothermal steam resources may be leased by citizens and by corporations chartered in the United States, as well as by municipalities.[97]

These statutes place some limitations on investment in these resources by individual alien investors. Because they give corporations investment rights, they do not substantially impair the ability of aliens to acquire rights indirectly in these mineral resources. Both the basic mining law and the geothermal steam law would appear to permit the formation of a local subsidiary corporation to exploit the resources. The reciprocity provisions of the mineral leasing laws may act in some cases to exclude alien investors.

Constitutionality of Federal Laws

Federal laws and regulations are subject to several of the challenges discussed above. The requirement of equal protection of the laws and the treaty rights of aliens are particularly important.

Although the Fourteenth Amendment is phrased to apply only to State governments, the Supreme Court has held that the Federal Government, too, must provide "equal protection of the laws."[98] The equal protection cases discussed in Chapter II will apply in like manner to Federal laws and regulations. Thus, it would appear to be unconstitutional for Federal agencies to discriminate against resident aliens.

The Foreign Assets Control Regulations and the Alien Property Regulations face different standards on this question, since they are premised on the hostile nature or enemy character of the aliens in question. In each set of regulations there are some procedural protections, so they may withstand constitutional challenge.

Since Federal and not State laws are concerned, there is no danger of interference with the foreign relations power. Both Federal law and treaties are the "supreme law of the land." In case of a conflict, courts will attempt to interpret them in such a manner that both can apply. If this cannot be done, the later of the two will be applied.

IV. RESTRICTIONS ON CORPORATIONS

Six States have laws which either exclude corporations from farm ownership and operation or substantially restrict their farming activities. In most of these States family farm operations may be incorporated, and certain other corporations may own farmland and operate farms. Each of these States has its own exceptions to these restrictions.

The main impact of these laws is to exclude major agribusinesses and conglomerates from direct farm operations. They do not commonly prohibit individual investors from buying farmland or from operating farms.

Six States in the Upper Midwest and Great Plains have statutes which substantially restrict the activities of certain corporations in farming operations. These States are Kansas, Minnesota, Oklahoma, North Dakota, South Dakota, and Wisconsin. These laws may establish substantial impediments to certain forms of investment in agricultural production. In each of these States except North Dakota, a statutory provision permits certain limited types of corporations to engage in agriculture, thus in most instances permitting family farm corporations to be formed. Four other States--Texas, Nebraska, West Virginia, and New York--have some statutory restrictions on corporate activity through their corporation laws.

The restrictions contained in corporate farming laws in the six States with substantial restrictions are of particular interest for two reasons. First, they usually represent an assessment by the local legislature that its concept of the family farm is threatened and that some form of restriction on corporate farming is a remedy. Second, these statutes may effectively exclude alien investment in agriculture because much of the investment would probably be in corporate form. When coupled with State statutes excluding aliens from land ownership, such general corporate restrictions may be interpreted as providing substantial protection for the family farm.

These laws are broader than the anti-alien legislation discussed in Chapter II of this report, which focused on alien ownership of land of all types. They forbid many corporations to own land, but they also forbid the same corporations to engage in agriculture or horticulture, directly or indirectly. In each case there is a statutory definition of the prohibited agricultural activity. The statutory definitions seem to be framed with the grain farm, the dairy farm, and the cattle ranch in mind. Thus, for example, in Minnesota nonexempt corporations are prohibited from engaging in farming. The statute then provides:

> 'Farming' means the cultivation of land for the production of (1) agricultural crops; (2) livestock or livestock products; (3) poultry or poultry products; (4) milk or dairy products; or (5) fruit or other horticultural products. It shall not include the production of timber or forest products; nor shall it include a contract whereby a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.[99]

The statutory definition of farming in each State is different. In general, the thrust of the statutes is on production itself, not on the later stages of assembling, marketing, and processing, where corporate involvement is still permitted. Activities such as forestry, which have traditionally been carried on by companies, not by individuals, are also commonly beyond the scope of the laws.

These anticorporation statutes are directed at the form of organization of the farm business. They prohibit corporations from engaging in the described activities. Except in North Dakota, there are exceptions for corporations which might be described as "family farm corporations." Some of the States also provide exceptions for other corporations, which are discussed below. These exceptions do not prohibit or restrict ownership of farmland or farm operations by nonresidents who do not use the corporate form of business. Thus, an individual proprietor or a partnership is not affected by these laws.

The Corporate Form of Ownership

A corporation is a legal fiction created by the laws of some State or country. It is given some of the legal rights of a natural person, such as the right to enter into contracts, to hold

property, to engage in litigation, and to enter into legitimate businesses. Its powers are specifically laid out by the law which creates it.

A corporation is normally owned by shareholders, who contribute capital. They elect a board of directors responsible for the general management of its affairs. The board then delegates some of the immediate management duties to officers. It is the corporation, and not the shareholders or directors personally, which is responsible for the company's debts. In this manner individual investors may limit their liability to the amount they have paid for their stock.

In the United States, State governments are generally responsible for chartering private, profit-making corporations. There are a few Federally chartered corporations, but they are mostly public corporations such as the Tennessee Valley Authority or quasipublic corporations such as Amtrak. In many respects, however, all corporations must also comply with Federal laws, securities laws, the Occupational Safety and Health Act, labor laws, and tax laws.

A State creates a corporation by issuing a charter or articles of incorporation. Normally this is a purely clerical act, in which the incorporators of the proposed company present proposed articles of incorporation to the secretary of state of some State, together with a nominal fee, and receive immediate approval. The articles generally follow a standard format, which is prescribed in State law, listing the name and purpose of the corporation, the address of its principal office, and a few other details.

One State can create a corporation, but it cannot authorize that corporation to do business in other States. Unlike a natural person, a corporation has no inherent rights beyond the boundaries of the State or foreign nation which created it. In order to engage in business in another State, a corporation must do one of two things. It may engage only in "interstate" business, such as selling goods by mail, and not have any offices or plants within the State. If it does so, it is protected by the commerce clause of the U.S. Constitution, since a State may not restrict a person who is engaging in interstate commerce.[100] Or it may decide that it also wants to engage in "intrastate" or local business within the State, establishing a plant or store or dealing directly with customers within the State. If it does this, it must have the permission of the State in which this new activity is to take

place.[101]

When an out-of-State corporation seeks and obtains this permission to do business, it subjects itself to the jurisdiction of the State in which it is doing business. This means that it is liable to suit in the local courts and must maintain an officer, called the resident agent, upon whom legal process may be served. It must also file an annual report, which usually contains only the most rudimentary information about the company. It is also subject to a franchise tax for the privilege of doing business in the State. It may also be subject to other State and local taxes, such as the corporate income tax.

Any out-of-State corporation is called a "foreign corporation" in the statutes. A "domestic corporation" is one whose articles of incorporation were issued in the State. From the point of view of Ohio, a Delaware corporation is as "foreign" as one from Afghanistan. Both would be subjected to the same legal rules for "foreign corporations," unless there was some peculiar statute which placed special burdens on truly alien corporations.

In theory, a State is free to refuse to grant articles of incorporation to a company. It is also free to refuse a foreign corporation the right to do business in the State. In practice, the process of incorporation and the process of submission to the jurisdiction are simple and routine. If the articles of incorporation and other papers conform to local standards, the remainder of the procedure is automatic.

Advantages and Disadvantages of Corporate Ownership

From the point of view of the investor, and particularly of the alien investor, there are a number of advantages and disadvantages to the corporate form of ownership. The decision to incorporate must be made by weighing all of the factors in light of the particular situation.

The corporate form offers the investor the advantage of limited liability. His liability is usually limited to the purchase price of his stock. Thus if the enterprise fails, he is not personally responsible for additional debts which have been contracted although he does, of course, lose his investment. For the alien investor, far removed from the daily operation of a business, this may be a particular advantage.

The corporate form also offers the ready possibility of pooling investment interests of several investors, without the problems inherent in a partnership form of operation.

It also eases the transfer of ownership interests. An investor's interest may be sold or transferred merely by transferring share certificates and making proper entries on corporate books. The cumbersome process of land conveyancing can thus be avoided. This may be a particular advantage when probate and estate considerations are taken into account. Real estate almost always must be the subject of a formal probate proceeding. Frequently a separate local ancillary administrator must be appointed to complete conveyance of the land to those entitled to inherit. Stock certificates, however, are treated as personal property. Local probate probably is not necessary--certification of inheritance procedures in the home country and transfer entries on the company books may be sufficient.

Disadvantages include the expense and inconvenience of maintaining corporate offices and records. Tax considerations may also militate against certain property investments being in corporate form. Federal tax law provides for two kinds of treatment for corporate income, but this distinction has no impact on State regulation of corporate farming.

Present State Restrictions

Restrictions on corporate ownership of land are of two varieties. Some of the restrictions are contained in the general corporation laws of the State. This kind of restriction is in effect in Nebraska, New York, Oklahoma, Texas, and West Virginia, and is discussed in the following section. Other restrictions are contained in legislation aimed specifically at corporate farming or corporate land ownership. This kind of restriction is in effect in Kansas, Minnesota, North Dakota, Oklahoma, South Dakota, and Wisconsin. It is discussed in a subsequent section. Details of the individual State provisions are in appendixes B and D.

Corporation Laws

Each State has laws providing for the creation of corporations and regulating their powers and responsibilities. In the nineteenth century corporations were organized for limited purposes and were severely restricted to the accomplishment of those

purposes. Corporate purposes and powers were narrowly enumerated in corporate charters and articles of incorporation.[102] A corporation which exceeded this narrow scope of authority was said to act ultra vires. Its actions beyond the permissible scope could be set aside.

None of the early corporations were formed for farming purposes. Most were organized for commercial or industrial ventures. Under the earliest charters and laws, corporations could hold enough real estate to accomplish their legitimate corporate purposes--enough to build a factory, construct a store, or operate a mine. They could not hold real estate as an investment.[103] This implicit restriction held corporations to that which was "necessary and proper" for the accomplishment of the listed corporate purposes.

Even when the "necessary and proper" clause of articles of incorporation was narrowly construed, it permitted substantial corporate ownership of land. For example, the lumber business was a permissible corporate purpose. It was found necessary and proper for lumber firms to own forests, so that trees might be cut and lumber produced.[104] But, in one case involving a railroad which held large tracts of city land for development, it was found that the corporation could own land incidental to railroad operations but not for general investment.[105]

Modern corporation laws have recognized that corporations may have almost unlimited business purposes. The Model Corporations Act provides: "Corporations may be organized under this Act for any lawful purpose or purposes, except for the purpose of banking or insurance."[106] Banks and insurance companies are incorporated under separate laws. It is usually not necessary to specify the purposes when seeking articles of incorporation for a general corporation not engaging in banking or insurance.[107] Corporations are granted powers concomitant with these general purposes. The Model Act provides: "Each corporation shall have power: ... (d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated."[108] Most State laws follow this general pattern.[109]

In any State which has such a broad permissible corporate purpose, a corporation could engage in farming or in landholding. Both farming and landholding are legitimate activities, so both of them would be lawful purposes. In such States, a corporation may be excluded from a business activity only if there is a specific statute containing such prohibition or if engaging in the activity

requires some license or permit which the corporation does not have. Thus a corporation cannot engage in law or medicine, although these are legitimate professional pursuits, because one must have a special license to engage in them. Such licenses are only issued to individuals.d/ One does not need a license to engage in farming or to hold land, so a corporation can engage in these activities without violating any law.

Even if State law limits corporations to landholdings which are "necessary and proper" for their legitimate business purposes, this is not a substantial restriction. When corporate purposes were narrowly defined, these statutes had a real meaning, but with general purpose clauses a corporation can always state that its purpose is land investment or farming, unless these activities are elsewhere specifically prohibited. Given such a declaration, the holding of land is clearly a necessary and proper part of its activities.

Texas law prohibits the formation of corporations for the purpose of acquiring and holding real estate,[110] except town-lot corporations operating in the development of cities.[111] It permits farming and ranching corporations, however, and such corporations may own land necessary for their operations.[112] Hence this statute does not particularly exclude corporations from agricultural land ownership or agricultural operations. The Texas corporation law prohibits a corporation from having both the purpose of cattle grazing and the purpose of operating a slaughterhouse or meatpacking plant.[113] The company may have either single purpose, but not both in combination.

The Oklahoma constitution also prohibits corporations from engaging in the real estate business.[114] A State statute implements the law,[115] but State courts have permitted extensive land holdings incidental to other businesses, including farming.[116] Oklahoma now has a statute directed at corporate farming activities in particular,[117] so these more general provisions are no longer significant.

Nebraska laws restrict land ownership by all out-of-State corporations.[118] There are, however, no limitations on land ownership by Nebraska companies, except the general restriction on alien

---

d/ Even in these professional fields, many States now permit the formation of professional corporations if all or most of the stockholders are themselves qualified professionals.

ownership in the corporate form. West Virginia collects a nominal tax of 5 cents per acre from corporations with large landholdings.[119]

New York will grant a corporation formed under the laws of a foreign nation permission to hold real estate only to the extent that the other jurisdiction grants similar permission to New York corporations.[120] This reciprocity requirement has had some impact on alien trading corporations which required office or warehouse space in New York. It might also have some impact on corporations desiring to invest in agricultural land.

Corporate Farming Laws

Six States in the Upper Midwest and Great Plains have legislation severely restricting farming activities by certain corporations. These States--Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, and Oklahoma--form a virtual band across the Nation from north to south (fig. 4).

The statutes in these States vary. In general the statutes prohibit many corporations either from engaging in agricultural pursuits or from owning land capable of use for agriculture. Some of the statutes focus only on one of these factors. In each State there are exceptions. North Dakota exempts only farmer cooperative corporations from its general prohibition, while South Dakota and Minnesota provide for many exceptions. Table 3 summarizes these provisions. Appendix D provides further information on the State laws, including statutory citations.

In each of these States except North Dakota, there is some exception which permits certain types of corporations to engage in farming or own farmland. These exceptions follow two basic patterns.

One kind of exception permits "family farm corporations" to engage in farming. These are defined as corporations in which all (or most) of the stockholders are relatives and in which one of the stockholders actually lives on the land and farms it. There is no restriction on the number of stockholders or on other aspects of corporate organization.

Table 3--Provisions of State corporate farming laws; restrictions on ownership of farmland and farming activity by all companies 1/

Item	Kansas	Minnesota	North Dakota	Oklahoma	South Dakota	Wisconsin
Year of adoption of law	1973	1973	1932	1971	1974	1974
Prohibitions contained in law:						
Corporations may not own farmland		x	x	x	x	x
Corporations may not operate farms	x	x	x	x	x	x
Corporations which are exempt from the law:						
Qualified farm corporations	x	x		x	x	x
Family farm corporations		x			x	
Cooperatives			x			
Trust companies					x	
Other exceptions to law:						
Present corporate owners may continue or expand		x		x	x	x
Breeding farms; seed		x			x	
Feedlots				x	x	
Development land		x			x	x
Other	x	x	x	x	x	x
Maximum acreage which corporation may hold	5,000	no limit	no limit	no limit	no limit	no limit

1/ Restrictions listed here are in addition to restrictions placed on corporations controlled by aliens. In addition to the States listed above, Texas imposes substantial restrictions on corporate land ownership through its corporation laws, originally enacted in 1893; Nebraska forbids landholding by out-of-State corporations under an 1899 law; and West Virginia imposes a 5-cent-per-acre tax on large corporate landholdings under a 1939 law.

Source: Appendix D.

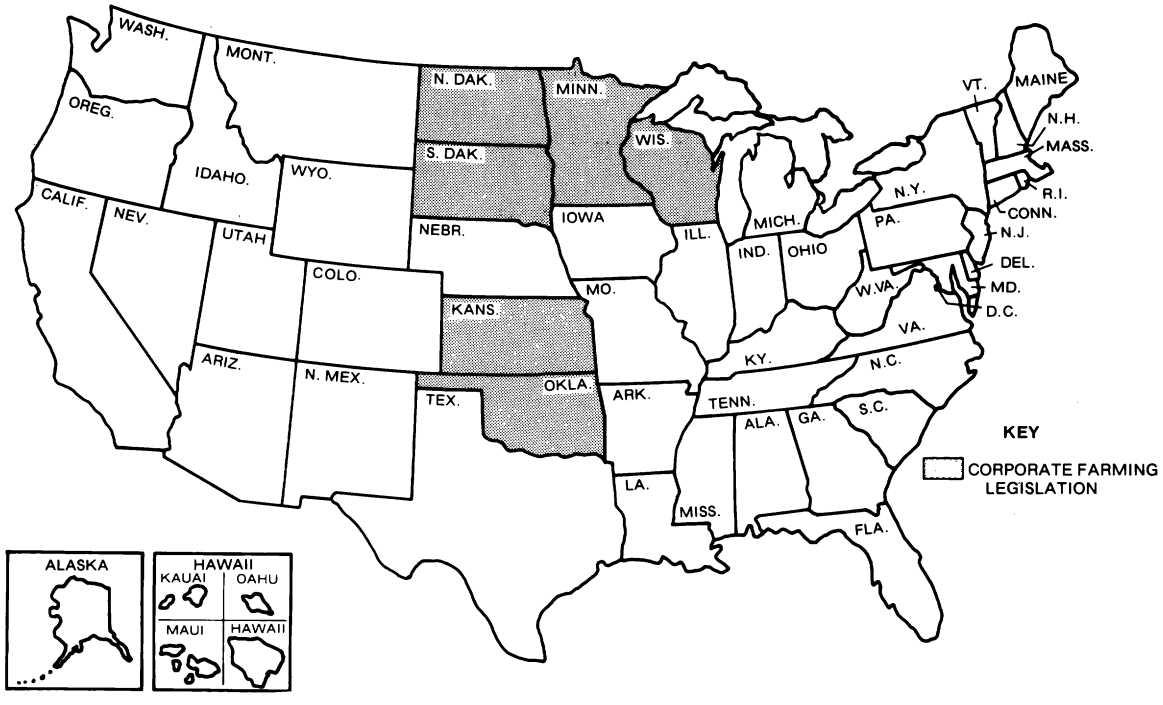

Figure 4

The other kind of exception permits "qualified farm corporations" to engage in farming.e/ These are corporations which have only a limited number of stockholders (usually no more than 10), which have the principal business activity of farming (usually measured by prohibiting more than 20 percent gross receipts from other sources), and which do not have any corporations as stockholders. These corporations may engage in farming, either directly or by leasing land to other farmers. There are no size limitations except in Kansas, where such corporations are limited to 5,000 acres.

Minnesota and South Dakota have both kinds of exemptions in their laws. Oklahoma, Kansas, and Wisconsin provide an exception only for the "qualified corporation." In each instance there are

e/ The specific title of these corporations varies from State to State; they may, for example, be called "exempt corporations" or something else.

variations in the technical details of the exemption. A farmer who wished to incorporate his operation might well qualify under either or both of these special exceptions. Other investors could, however, probably only qualify under the "qualified farm corporation" exception. In these States, 10 investors could form such a corporation as long as they followed the technical limitations contained in the law.

While the exception for "qualified corporations" closely parallels the requirements for a small business corporation under subchapter S of the Federal income tax law,[121] a "qualified farm corporation" may or may not be a subchapter S corporation. The corporation must meet the State law requirements in order to own land or to engage in farming. It must meet Federal requirements in order to qualify for special tax treatment under subchapter S. Some corporations will meet both standards. But, in some cases a subchapter S corporation will not qualify under State law. For example, a subchapter S corporation in Kansas would not qualify if it held more than 5,000 acres of land. In other cases a "qualified farm corporation" may not meet the requirements of the Federal tax law for subchapter S treatment. For example, a Wisconsin qualified farm corporation may have 15 stockholders, more than is permitted under the Federal tax law. Also, the decision to be taxed under subchapter S is voluntary. A corporation might be eligible for such treatment yet choose to be taxed as an ordinary corporation under the Internal Revenue Code,[122] if it had certain kinds of expenses.

Each State has its own list of other exemptions from these laws, which are summarized in appendix D. Minnesota, South Dakota, and Wisconsin permit corporations to continue to hold land which they owned before the act took effect, and to expand these landholdings by as much as 20 percent in each 5-year period.[123] Oklahoma exempts preexisting corporate holdings, but does not permit their expansion.[124] In some of these States a corporation may own land for nonfarming purposes and lease it to an individual or to an exempt corporation for actual farming.[125] Other exceptions permit seed companies or those which produce breeding stock to continue their operations.[126] Because of the variations, the detail of each State law should be examined with care.

The exceptions and definitions in the statutes reflect local interests and agricultural activities. In Minnesota a nonexempt corporation may raise wild rice but not beef cattle, while in neighboring South Dakota the reverse is true. In Oklahoma, the only major oil-producing State involved, mineral royalties may be

added to gross receipts from agricultural operations to determine whether the required 80 percent of corporate gross receipts comes from farm-related activities. In the other States, mineral royalties are commonly treated as nonagricultural income and are categorized with interest, dividends, and other nonfarm income.

Limitations on State Regulation of Corporations

Constitutional Limitations

The constitutional limitations discussed in chapter II apply to State efforts to exclude corporate farming. The result in the case of corporate farming is, however, much clearer. In making a determination that an individual or partnership should be a landholder or operator of a farm, the legislature is making an economic decision. Since this question deals with economic rights, and not basic human rights, the Supreme Court has been much more willing to accept local legislative judgments.

Corporations, like individuals, are entitled to equal protection of the laws, once they are licensed to do business in a State.[127] But a statutory classification excluding corporations from a certain business will be judged by the more lenient "rational basis" test since no fundamental rights are involved.[128] Using this test, the legislative judgment will almost certainly be upheld. Even the discriminations among corporations, permitting small corporations to hold land but excluding agricultural giants, and permitting existing corporations to continue to hold land, can probably be justified as a maintenance of the existing system of agricultural holding.[129] When such economic questions arise, the courts are very unwilling to substitute their economic judgment for that of a legislature.

Corporations as well as individuals are entitled to due process of law. But in interpreting the due process clause, as in interpreting the equal protection clause, the courts have refused to overturn the decision of a legislature. The North Dakota law prohibiting corporate ownership of land has been upheld by the U.S. Supreme Court in face of such a challenge.[130] A recent State case reaffirms this position.[131] Only last year the U.S. Supreme Court upheld another North Dakota statute which excluded corporations from owning pharmacies.[132]

Other limitations which applied to anti-alien legislation would not apply in the anticorporation field. Since interference with foreign affairs is, at most, indirect, there is no impediment to the Federal foreign relations power. There does not appear to be any overriding Federal legislation or treaty obligations, which would set aside these State laws restricting corporate farming. Those treaty obligations of the United States which permit aliens to engage in certain businesses always prescribe that the aliens will be subject to at least the same restrictions as citizens. Hence a prohibition on investment in the corporate form, effective against citizens, would be effective against aliens as well.

Practical Limitations

It is not the intent of this report to present ways to preserve the family farm. However, while certain statutes are generally thought to restrict corporate farming, in fact they are intended primarily to restrict only certain kinds of activities by certain types of corporations. Even within the specified intent of these laws, there are two practical limitations on their impact: the laws do not totally insulate farming from outside ownership and they generally permit substitute forms of involvement by corporations through contracting.

Investors can continue to buy land and operate farms if they either meet the requirements for a qualified farm corporation (in all of the States except North Dakota) or purchase the land as individuals, partnerships, or limited partnerships. They may then either operate the farm directly as a business or rent the land to farmers for operation. Thus these laws do not exclude investors from the market for agricultural land, but they restrict the form in which they may operate.

The principal effect of this restriction is to prohibit large incorporated agricultural products businesses from investing in farmland and from directly engaging in farm operations. Most of the major agribusinesses are publicly held corporations with far more than 10 shareholders. Accordingly, they could not meet the requirements for "qualified farm corporations" and could not engage in farming in these States. Direct and formal vertical integration to the production level is thus prohibited. In some instances, agribusinesses have used limited partnerships or joint ventures to circumvent the statutory prohibitions on corporate ownership or operation of farms. In the opinion of the first author, there is substantial doubt about the legality of such

arrangements, but the matter appears not to have been litigated.

Even major agribusinesses do not appear to be prohibited from engaging in forward contracting with individual farmers for their output of certain crops. The close relationship, common in the canning industry, between the farmer, who owns land and manages and operates the farm, and the canning company, which agrees to purchase his total production at a determined rate, could be applied to other fields of agriculture. Although major food processors would not thereby gain ownership of the land, long-term forward contracting would assure them of supplies of basic commodities for the term of the contract. The State laws do not appear to forbid this kind of contractual arrangement. It may have the same practical effect as formal vertical integration. It has not, however, become common except for a few commodities.

Effectiveness of State Restrictions

Carefully drawn State statutes may restrict certain kinds of direct corporate activity in land ownership and farm operation. Exactly which kinds of activity should be prohibited, if any, and which kinds should be protected, if any, is a matter of public economic, social, and political choice. Current legislation limits only certain kinds of corporate activity by certain kinds of corporations, and does not extend to "corporate farming" in all forms. This may mean that corporations which are prohibited by statute from engaging in a certain activity may be able to avoid such restrictions through substitute legal forms of involvement.

Most of the present laws permit a number of deviations from ownership and operation by individuals. The permission for a qualified farm corporation to purchase land and operate farms is the most significant. As long as formal requirements are met, and no more than 10 investors are involved in any one corporation, they can be totally separated from the farming operation. They may, indeed, be alien investors. Few of the State laws have any effective limitations on such corporations. In most cases acreage limitations may be avoided by forming multiple corporations.

Thus, the only corporations which are effectively excluded are those which cannot qualify for the special exceptions. Failure to qualify may be the result of one of two circumstances. First, the company may be so broadly held that it cannot meet the 10-shareholder requirement. This will act as a deterrent to any

publicly held corporation, and to many private corporations, but it will not inhibit the investments of individual investors, at home or abroad, who have sufficient personal capital to invest in agricultural land.

Secondly, a corporation may fail to qualify under the requirement (differently articulated in different States) that most of its income come from farming operations. This should exclude the major diversified businesses, both those concentrated in agriculture and those of a conglomerate nature. Again, it will not preclude the individual investor who is able to incorporate his agricultural holdings in a qualifying corporation separate from his other investments.

Where State statutes prohibit only corporate farming operations and not land ownership, it may also be possible for corporations to hold land and rent it to individual family farmers.

V. LEGISLATION--STATE OR FEDERAL?

Present State statutes regulating alien ownership of land do not in fact exclude aliens from investment in real estate. Because of constitutional limitations and the problems of enforcement which confront State laws, the consideration of any proposed regulation of alien investment in land should be at the Federal level.

State statutes controlling corporate farming, in contrast, appear to regulate local economic activity. There are fewer constitutional and practical problems. Although Congress could legislate with regard to this issue, State legislation appears also to be constitutionally permissible.

Control of Alien Investment

Although a majority of States have some form of control over alien investment in agricultural land, the statutes are not truly effective in most of these jurisdictions. Even so, the patchwork of laws, and remnants of earlier legislation, may deter careful foreign investors from real estate investments in the United States, even where they are permitted by law. Because the creation and definition of property rights have traditionally been a matter for State legislation, these questions will remain, at least in part, questions for State legislatures.

There are many competing considerations in the creation of a policy. The desire of citizens and legislators to maintain local control of the ownership and production of basic agricultural commodities and natural resources militates for restrictions on alien investment. The nature of control and ownership may affect the long-term availability of these resources to local consumers.

On the other hand, various considerations would call for an open investment policy. Alien investment may be necessary to offset negative trade balances or for other reasons. Any closing of agricultural investments in the United States to aliens may have an offsetting reciprocal effect against American industrial investors abroad. Reduction of barriers to international economic activity

of all kinds is sometimes sought as a goal in itself.

Legislation to resolve these questions may be enacted at either the State or national level. State legislation must be based on the traditional power of a State to define and create property rights. Federal legislation could be premised on the power of Congress to regulate foreign commerce, since alien investment certainly falls within that classification.

Federal legislation may well be preferable, whether it is more or less restrictive than present State laws. Only Federal legislation could take a comprehensive approach to alien investment. Alien investors may choose agricultural investments, portfolio investments, urban real estate, or direct corporate participation in manufacturing and trade. State legislation of the type studied here can only touch those elements which are involved with real estate. Thus, State laws restricting land ownership may divert a disproportionate share of alien investment into other sectors of the economy. Similarly, each State legislature has jurisdiction only within its own borders. Highly restrictive legislation in one State may simply divert investment to other States, where it may be unduly concentrated.

Furthermore, only the Federal Government can perceive the foreign relations implications of various regulations which have a direct impact on foreign powers. Indeed, as the foreign relations aspects of exclusion of alien investors become more significant, it may no longer be possible to characterize State exclusions as "incidental" in their effect on foreign relations.[133] If the purpose or primary effect of new State legislation is to discriminate against aliens, it will be very difficult to call the effect on foreign relations "incidental." In such case, the entire system of State regulation may be invalidated.

Only in the Congress will the national interests in foreign relations and trade be properly balanced against local interests in the protection of local property against alien incursions. To place the decisionmaking authority at the Federal level may well mean that those favoring more open investment policies are more likely to prevail, since both Congress and the Executive Branch have been seen to favor more open policies on foreign trade.[134] These decisions are being made in the context of other international economic decisions. Only the Congress, and not individual State legislatures, is in a position to weigh the international economic interests of the United States against other considerations.

Control of Corporate Investment

State statutes controlling corporate investment in agricultural land and corporate activity in farming are probably constitutional because they appear to regulate economic activity rather than individual rights.

The localized nature of the present laws indicates that they are a response to a problem that has apparently been the most intense in one region. For this reason, as well, State legislation might be upheld. The traditions, history, and needs of these States with extensive grain farming may produce a different form of legal regulation of ownership than those of States with predominantly other kinds of agricultural enterprises.

Of course, Congress could also consider legislation on the same subject, since such regulation may affect interstate commerce. Any Federal law would prevail over conflicting State Laws. Thus consideration of this question at either the Federal or State level appears possible and constitutionally permissible.

REFERENCES

Superscript entries in the text refer to the corresponding items below. A simplified form of legal notation is followed.

References to judicial decision consist of a number, which indicates a volume number, followed by an abbreviation of the name of the series, followed by a page number. If two page numbers appear, the first indicates the general reference for the case and the second indicates the citation for the material in question. The year of the decision follows in parentheses. The most important series of judicial reports are:

F.2d	Federal Reporter, second series
F.Supp.	Federal Supplement
U.S.	United States Reports

The following other reports are also indicated below:

Cal.2d	California Reports, second series
Cal.App.2d	California Appeals Reports, second series
Cal.Rptr.	California Reporter
Mass.	Massachusetts Reports
N.C.A.	North Carolina Appeals Reports
N.E.	Northeastern Reporter
N.E.2d	Northeastern Reporter, second series
N.W.2d	Northwestern Reporter, second series
N.Y.2d	New York Reports, second series
N.Y.S.2d	New York Supplement, second series
Or.	Oregon Reports
P.2d	Pacific Reporter, second series
S.E.2d	Southeastern Reporter, second series

Reference to statutes and regulations consist of a number, which indicates the title involved, an abbreviation of the name of the statutes or regulations, followed by another number, which indicates the section or part number (<u>not</u> the page number). The two important Federal series are:

U.S.C.	United States Code
C.F.R.	Code of Federal Regulations

Reference to law review articles and other material from periodicals consists of the volume number, followed by the name of the publication and the first page of the article. The date of publication follows in parentheses. Books and treatises are referenced by the name of the author, the title, and the page numbers.

1. See, e.g., Senate Bill 3955, 93d Congress (1974).

2. Public Law 93-479; 88 Stat. 1450.

3. The Schooner Exchange v. M'Faddon, 11 U.S. (7 Cranch) 116 (1812); Berizzi Bros. v. S.S. Pesaro, 271 U.S. 561 (1926).

4. 26 Dept. of State Bull. 984 (1952).

5. Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2d Cir. 1964).

6. See the bill proposed by the State Department in 1973: House Bill 3493, 93d Congress (1974).

7. See, e.g., Vienna Convention on Diplomatic Immunities, art. 22, T.I.A.S. 7502, 500 U.N.T.S. 95.

8. In a number of cases litigants have sought to seize the commercial property of foreign governments to litigate unrelated claims involving that government's political actions. The "Act of State" doctrine usually provides a defense against this kind of suit, but separate incorporation of the commercial or investment activity might help to insulate it from other claims.

9. Uniform Partnership Act, sec. 8(3).

10. Ibid., sec. 25(1).

11. See Uniform Limited Partnership Act, in effect in 48 States.

12. Hemingway, The Law of Oil and Gas, 1.

13. Ibid. 10-18.

14. Ibid. 17.

15. Ibid. 213-220.

16. For a summary of the history of the feudal system, see 1 Pollock & Maitland, History of English Law (reissued 2nd ed., 1968) 458-67.

17. 2 Blackstone, Commentaries *250.

18. Naturalisation Act, 1870, 33 & 34 Vict. c. 14, sec. 2.

19. 2 Kent, Commentaries 61-63.

20. The reader interested in history is directed to the Pennsylvania statutes cited in appendix B. They include a series of acts in which the State legislature gradually extended the property rights of aliens.

21. 3 American Law of Property sec. 12.69.

22. Terrace v. Thompson, 263 U.S. 197 (1923), Porterfield v. Webb, 263 U.S. 225 (1923), Webb v. O'Brien, 263 U.S. 313 (1923), Frick v. Webb, 263 U.S. 326 (1923).

23. Oyama v. California, 332 U.S. 633 (1948). Kajiro Oyama, an alien ineligible for citizenship, had purchased land in the name of his 6-year-old son, Fred Oyama, who had been born in the United States. The Alien Property Law restricted this kind of purchase. The Supreme Court held this restriction to be a violation of Fred Oyama's rights as a natural-born citizen of the United States. It therefore did not reach the question of whether it also restricted Kajiro Oyama's rights as an alien.

24. Takahashi v. Fish and Game Commn., 334 U.S. 410 (1948) (commercial fishing license).

25. Kenji Namba v. McCourt, 185 Or. 579, 204 P.2d 569 (1949); Sei Fujii v. State, 38 Cal.2d 718, 242 P.2d 617 (1952).

26. For a general discussion of the history and effect of the alien land law in California, see McGovney, "The Anti-Japanese Land Laws of California and Ten Other States," 35 California Law Review 7 (1947), and Ferguson, "The California Alien Land Law and the Fourteenth Amendment," 35 California Law Review 61 (1947).

27. United States, Public Land Law Review Commission, History of Public Land Law Development 482-3.

28. 50 U.S.C.App., sec. 1 et seq.

29. 8 C.F.R. parts 501-510.

30. See Boyd, "Treaties Governing the Succession to Real Property by Aliens," 51 Michigan Law Review 1001 (1953); Berman, "Soviet Heirs in American Courts," 62 Columbia Law Review 257 (1962).

31. These challenges are discussed below, under the headings "Constitutional Limitations."

32. U.S. Constitution, Amendment XIV, sec. 1.

33. Kenji Namba v. McCourt, 185 Or. 579, 204 P.2d 569 (1949); Sei Fujii v. State, 38 Cal.2d 718, 242 P.2d 617 (1952).

34. Schneider v. Rusk, 377 U.S. 163 (1964), Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

35. Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953).

36. Pennoyer v. Neff, 95 U.S. 714 (1877).

37. Note, "Developments in the Law--Equal Protection," 82 Harvard Law Review 1065 (1969); Gunther, "A Model for a Newer Equal Protection," 86 Harvard Law Review 1 (1972).

38. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).

39. Railway Express v. New York, 336 U.S. 106 (1949).

40. McLaughlin v. Florida, 379 U.S. 184, 192-4 (1964); Loving v. Virginia, 388 U.S. 1, 10 (1967); Hunter v. Erickson, 396 U.S. 385, 391-2 (1969).

41. Griffin v. Illinois, 351 U.S. 12 (1956), Harper v. Board of Elections, 383 U.S. 663 (1966).

42. 403 U.S. 365 (1971).

43. Ibid. 372.

44. 413 U.S. 634 (1973).

45. 413 U.S. 717 (1973).

46. See, e.g., Sei Fujii v. State, 38 Cal.2d 718, 242 P.2d 617 (1953).

47. Nebbia v. New York, 291 U.S. 502 (1934), North Dakota Pharmacy Board v. Snyder's Stores, 414 U.S. 156 (1973).

48. 331 U.S. 503 (1947).

49. 389 U.S. 429 (1968).

50. 331 U.S. 503 (1947).

51. Ibid., 517.

52. The case also involved the continuing validity and effectiveness of treaties between the United States and the Weimar Republic in Germany.

53. See generally, Berman, "Soviet Heirs in American Courts," 62 Columbia Law Review 257 (1962).

54. 389 U.S. 429 (1968).

55. In re Estate of Kraemer, 276 Cal.App.2d 715, 81 Cal.Rptr. 287 (1969).

56. In re Estate of Leikind, 22 N.Y.2d 346, 292 N.Y.S.2d 681, 239 N.E.2d 550 (1968).

57. Shames v. Nebraska, 323 F.Supp. 1321 (1971).

58. In re Johnston, 16 N.C.A. 38, 190 S.E.2d 879 (1972).

59. Gordun v. Fall, 287 F.Supp. 725 (1968).

60. Clarke v. Clarke, 178 U.S. 186, 190-1 (1900).

61. U.S. Constitution, art. I, sec. 8.

62. DiSanto v. Pennsylvania, 273 U.S. 34, 44 (1927) (dissenting opinion).

63. Hines v. Davidowitz, 312 U.S. 52 (1941).

64. U.S. Constitution, art. VI.

65. 31 C.F.R. part 500. Related regulations appear in 31 C.F.R. parts 505-530.

66. 8 C.F.R. parts 501-510.

67. See Part III, below.

68. U.S. Constitution, art. VI.

69. Missouri v. Holland, 252 U.S. 416 (1920) (treaty), United States v. Pink, 315 U.S. 203 (1942) (executive agreement).

70. United States v. Pink, 315 U.S. 203 (1942).

71. The treaty with Denmark, for example, grants Danes and Danish companies equal rights with Americans to engage in "commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious and philanthropic activities." Treaty of Friendship, Commerce, and Navigation, art. VII, paragraph 1. 12 U.S.T. 908, T.I.A.S. 4797, 421 U.N.T.S. 105. A more common provision is that in article V of the Treaty of Establishment with France, 11 U.S.T. 2398, T.I.A.S. 4625, 401 U.N.T.S. 75, which provides for "national treatment with respect to engaging in all types of commercial, industrial, financial and other activities for gain."

72. See Boyd, "Treaties Governing the Succession to Real Property by Aliens," 51 Michigan Law Review 1001 (1953).

73. S.C. Laws, 1896, no. 91.

74. S.C. Laws, 1956, no. 1131.

75. 50 U.S.C.App. sec. 1 et seq.

76. 8 C.F.R. parts 501-510.

77. 31 C.F.R. part 500. Related regulations are the Cuban Assets Control Regulations, 31 C.F.R. part 515, and the Rhodesian Sanctions Regulations, 31 C.F.R. part 530.

78. Schedule to 31 C.F.R. sec. 500.201.

79. 31 C.F.R. sec. 515.201(d).

80. 31 C.F.R. sec. 530.201.

81. United States, Public Land Law Review Commission, Digest of Public Land Laws (1968).

82. 43 U.S.C. sec. 315 et seq.

83. 43 U.S.C. sec. 315b.

84. 43 C.F.R. sec. 4111.1(c) (within grazing districts) and 43 C.F.R. sec. 4121.1-1(c) (outside grazing districts).

85. 36 C.F.R. sec. 231.3(d)(1).

86. Forest Service Manual, 1969, sec. 2231.14.

87. Forest Service Manual, 1969, sec. 2231.16 and 2231.18.

88. 43 U.S.C. sec. 1331 et seq.

89. 30 U.S.C. sec. 22.

90. 30 U.S.C. sec. 24.

91. 30 U.S.C. sec. 181 et seq.

92. 30 U.S.C. sec. 352.

93. 30 U.S.C. sec. 181.

94. 30 U.S.C. sec. 352.

95. 30 U.S.C. sec. 181; section 352 incorporates this provision by reference.

96. Ibid.

97. 30 U.S.C. sec. 1001 et seq.

98. Schneider v. Rusk, 377 U.S. 163 (1964), Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

99. Minn. Stat. sec. 500.24 subd. 1(a).

100. Sioux Remedy Co. v. Cope, 235 U.S. 197 (1914). See also the recent decision in Allenberg Cotton Co. v. Pittman, 419 U.S. 20 (1974).

101. This is commonly called "submission to the jurisdiction."

102. Ballentine, Corporations (Rev. edn.) 221-4.

103. Ibid., 226-8.

104. State v. International Paper Co., 342 P.2d 565 (Okla. 1959).

105. Ballentine, Corporations (Rev. edn.) 227, citing Williams v. Johnson, 208 Mass. 544, 95 N.E. 90.

106. American Bar Association, Model Business Corporation Act (1969 rev.) sec. 3. Cf. Corporation Law of Delaware, sec. 101(b).

107. See, e.g., Minn. Stat. sec. 301.03.

108. Model Act, sec. 4; cf. Delaware Corporation Law, secs. 121, 122(4).

109. Ballentine, Corporations (Rev. edn.)

110. Vernon's Annotated Texas Statutes art. 1302-4.04.

111. Ibid., art. 1302-4.05.

112. Kirby v. Pitchfork Land and Cattle Co., 129 S.W. 1151 (Tex. Civ. App. 1910).

113. Vernon's Annotated Texas Statutes, Business Corp. Act, art. 2.01(B)(3).

114. Okla. Const., art. 22, sec. 2.

115. Okla. Stats., title 18, sec. 1.20.

116. State v. International Paper Co., 342 P.2d 565 (Okla. 1959), LeForce v. Bullard, 454 P.2d 297 (Okla. 1969), Oklahoma Land and Cattle Co. v. State, 456 P.2d 544 (Okla. 1969).

117. Okla. Stats., title 18, secs. 751-954.

118. Reissue Revised Statutes, sec. 76-402.

119. West Virginia Code Annotated, sec. 11-12-75.

120. New York, Gen. Corp. Law, sec. 221.

121. 26 U.S.C. secs. 1371 et seq.

122. 26 U.S.C. secs. 11, 301-395.

123. Minn. Stat. sec. 500.24 subd. 2(c) (1973); S.D. Laws, 1974, c.294, sec. 4(3); Wisc. Stats. sec. 182.001(2)(c) (1974).

124. Okla. Stat. title 18, sec. 952 D.

125. See, e.g., Minn. Stat. sec. 500.24 subd. 2(h).

126. See, e.g., Minn. Stat. sec. 500.24 subd. 2(d) and (e).

127. WHHY v. Glassboro, 393 U.S. 117 (1968), Wheeling Steel Corp. v. Glander, 337 U.S. 561, 571 (1949).

128. Railway Express v. New York, 336 U.S. 106 (1949).

129. Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583 (N.D. 1971); Asbury Hospital v. Cass County, 326 U.S. 207 (1945).

130. Asbury Hospital v. Cass County, 326 U.S. 207 (1945).

131. Coal Harbor Stock Farm, Inc. v. Meier, 191 N.W.2d 583 (N.D. 1971).

132. North Dakota Pharmacy Board v. Snyder's Stores, 414 U.S. 156 (1973).

133. In Clark v. Allen, 331 U.S. 503, 517 (1947), the Supreme Court sustained the California reciprocal inheritance statute because its effect on foreign relations was merely "incidental." Here the effect is even more indirect.

134. The history of foreign trade regulation over the past 20 years is evidence of this phenomenon. In general trade concessions have been achieved only on a reciprocal basis.

APPENDIX A

Research Methods

Two procedures were used in the preparation of this report. A mail questionnaire was developed at the Economic Research Service and sent to the attorneys general of the 50 States. Library and direct research were used to supplement this information.

Questionnaire Procedure

The questionnaire, developed by the second author, focused on State laws restricting alien ownership and corporate ownership of farm real estate, and on State laws restricting corporations from engaging in farming and ranching. It inquired about court challenges to the validity of this legislation and about bills introduced in the State legislature since 1968 to amend or introduce such restrictions.

The questionnaire also asked about current registration and reporting requirements for corporations and, in particular, whether State officials maintained a list of alien-controlled corporations operating within the State. Responses to these questions were of little assistance. Although corporations are commonly required to register, often the only information requested is the name and address of the corporation and its local agent. Although some States maintain lists of alien corporations, these provided little information.

The questionnaire was mailed to the attorney general in each State, over the signature of the Administrator of the Economic Research Service, early in January 1974. Twenty responses were received within the first month. After a followup inquiry, about 20 more responses were received by early May. Many responses came from the office of the attorney general, although some were from the secretary of state, the State Department of Agriculture, and other officials. In some cases, several State officers cooperated in preparing the response.

In some cases, where responses could not be obtained from State agencies, faculty members in land-grant universities were asked to complete the questionnaires. Each of these faculty members was an attorney.

Library and Other Research Procedures

Using the questionnaire responses as a starting point, the first author did library research, with the assistance of a third-year law student. This involved complete research for those States which had provided no response or inadequate response to the questionnaire. For the other States, it involved collation of material and a spot check on the accuracy of the questionnaire responses in some instances. This library research also involved an examination of the treaty obligations of the United States.

In cases in which questionnaires or other information indicated legislation was pending early in 1974, the current status of this material was checked. In some cases final 1974 session law books revealed the status of these bills. In other cases it was necessary to contact State officials by telephone.

In addition to this work, general legal research on the history of restrictions on aliens and on constitutional limitations was conducted.

APPENDIX B

State Restrictions on Alien and Corporate Ownership of Real Estate

This appendix provides a summary of State restrictions on alien and corporate ownership of real estate. For detailed provisions, the reader should consult the laws of the particular State. This material is not provided as a basis for investment decisions; the investor should consult his private counsel for legal advice relating to various transactions.

Entries are provided for aliens and for corporations. Any special State laws which apply only to alien inheritance or alien purchase of public lands, or to alien controlled corporations, are separately noted.

Statutory citations are provided where applicable. A statutory citation next to the entry "no restrictions" indicates an affirmative statement in the relevant code. No citation next to the entry "no restrictions" indicates the absence of any statutory provision on the question.

In the case of corporations, the entry "no restrictions" indicates that there are no restrictions relating to the ownership of real estate. Corporations are, of course, excluded from many other occupations, like the practice of most professions, and may engage in others, like banking or insurance, only with special permits. These provisions have not been noted in this study.

ALABAMA

Aliens--No restrictions. Alabama Constitution, art. I, sec. 34; Ala. Code, title 47, sec. 1.

Corporations--No restrictions on land ownership.

ALASKA

Aliens--No restrictions, except on the acquisition of mining rights in State-owned lands.

Corporations--No restrictions, except on the acquisition of mining rights in State-owned lands by alien corporations.

State-Owned Lands--Mining rights in State-owned lands may be acquired only by adult citizens (or their guardians or trustees), adult aliens who have declared their intention to become U.S. citizens, adult aliens whose home country grants reciprocal treatment, associations of the above persons, and qualified corporations. To be qualified, a corporation must be organized under the laws of a State or territory of the United States, and no more than 50 percent of its stock may be owned or controlled by aliens who could not own directly. Alaska Stats. sec. 38.05.190.

ARIZONA

Aliens--Aliens"eligible for citizenship" have the same rights as citizens. Aliens not "eligible for citizenship" have only rights provided by Federal treaties. Ariz. Rev. Stats. Ann. sec. 33-1201 through sec. 33-1207.

Alien Corporations--Corporations organized outside of the United States may not own or hold land. Ariz. Rev. Stats. Ann. sec. 10-484(D).

Corporations--No restrictions except on alien corporations.

State Lands--Sale, lease, and sublease of State lands is limited to citizens, aliens who have declared their intention to become U.S. citizens, and corporations qualified to do business in the State. Acreage limitations apply. Ariz. Const. Art. X, sec. 11; Ariz. Rev. Stats. Ann. sec. 37-240.

ARKANSAS

Aliens--No restrictions.

Corporations--No restrictions.

CALIFORNIA

Aliens--Aliens may take, hold, and dispose of property within the State. Calif. Civil Code, sec. 671.

Alien inheritance--Alien inheritance of real estate is dependent on the existence of a reciprocal right of inheritance by Americans in the country of the alien's citizenship. Calif. Civil Code sec. 259. (Note: California courts have brought the continuing validity of this section into question. See In Re Estate of Kraemer, 276 C. A2d 715, 81 Cal. Rptr. 287 (1969).)

Corporations--No restrictions.

COLORADO

Aliens--No restrictions.

Corporations--No restrictions.

CONNECTICUT

Aliens--Aliens resident in the United States may purchase, hold, inherit, or transmit real estate. Citizens of France may also own real estate, even though notresident in the United States. The spouse and lineal descendants of an alien owner may inherit and hold the real estate of the alien. Nonresident aliens may own real estate for the purposes of mining and smelting. Conn. Gen. Stats. Rev., sec. 47-57, 47-58.

Alien Inheritance--A State law provides that in appropriate cases a probate court may withhold distribution of property to a beneficiary residing outside the United States. The court may convert the property into funds and pay such to the State Treasurer, to be held subject to court order, or it may direct that such funds be converted into necessities of life, such to be sent to the beneficiary. Conn. Gen. Stats. Rev., sec. 45-278; See Lamb v. Szabo's Estate, 27 Conn. Supp. 247, 235 A.2d 849, (1967).

Corporations--No restrictions.

DELAWARE

Aliens--No restrictions.

Corporations--No restrictions.

FLORIDA

Aliens--No restrictions.

Corporations--No restrictions.

GEORGIA

Aliens--Aliens have equal rights with citizens, so long as their government is at peace with the United States. Ga. Code Ann. sec. 79-303.

Corporations--No restrictions.

HAWAII

Aliens--No restrictions except that persons seeking to purchase residential lots from a development board or in a development tract must be citizens or aliens who have declared their intent to become U.S. citizens. See, e.g., Hawaii Rev. Stats. sec. 206-9, sec. 516-33.

Corporations--No restrictions.

IDAHO

Aliens--No restrictions, except regarding purchase of State lands.

Corporations--No restrictions.

State Lands--State lands may be sold only to citizens and to those who have declared their intention to become citizens. Idaho Code, sec. 58-313.

ILLINOIS

Aliens--Aliens have full rights to acquire land, either by purchase or inheritance, but must dispose of it within 6 years. Ill. Rev. Stats., c. 6, secs. 1 and 2.

Corporations--No restrictions.

INDIANA

Aliens--Only citizens and aliens resident in the United States (and Indians, Negroes, mulattos, and other persons of mixed blood) may take or hold land. Aliens must dispose of land in excess of 320 acres within 5 years of acquisition, unless they become citizens in the interim. Ind. Code secs. 32-1-2-1 and 32-1-8-2.

Corporations--No limitations.

IOWA

Aliens--Aliens resident in Iowa have the same rights as citizens. Nonresident aliens may acquire and hold property within city or town limits and also may acquire and hold up to 640 acres outside of municipal limits. Iowa constitution, art. 1, sec. 22, Iowa Code sec. 567.1.

Alien inheritance--The right of aliens resident outside of the United States to inherit property is dependent upon the existence of a reciprocal right for U.S. citizens to inherit in their home country. Iowa Code, sec. 567.8.

Alien corporations--Corporations incorporated outside of the United States, and all other corporations in which half or more of the stock is owned by nonresident aliens, may enforce a lien or judgment for any debt or liability and may be a purchaser at a sale of real estate by virtue of such lien, liability, or judgment if all real estate acquired by such method is sold within 10 years after the title was perfected in said corporation. In all other instances the above corporations are prohibited from acquiring title to or holding real estate. Iowa Code, sec. 491.67, 567.1 and 567.2.

Corporations--See restrictions under "Alien corporations." No other restrictions. Iowa Code, sec. 491.67 and 567.2.

KANSAS

Aliens--No restrictions, except on inheritance.

Alien inheritance--Aliens eligible for citizenship may inherit in the same manner as citizens. Other aliens may inherit only as provided in a treaty between the United States and the

country of the alien's citizenship. Kans. Stats. Ann. sec. 59-511.

Corporations--There are substantial restrictions on corporations engaging directly or indirectly in agriculture or horticulture. See appendix D.

KENTUCKY

Aliens--An alien who has declared his intention to become a citizen of the United States may acquire or inherit land as if he were a citizen. If he has not become a citizen within 8 years of acquisition, the property escheats to the State. Ky. Rev. Stats. Ann. 381.290, 381.300.

An alien who is a resident of the State may take and hold lands for a residence, or for a business, trade, or manufacture, for not more than 21 years. Ky. Rev. Stats. Ann. 381.320.

Special rules apply for the alien wife or child of a U.S. citizen. Ky. Rev. Stats. Ann. 381.310.

Alien inheritance--Aliens who have declared their intention to become citizens and nonresident aliens are entitled to inherit property, but must dispose of it within 8 years, unless the alien becomes a citizen. Ky. Rev. Stats. Ann. 381.300, 381.330.

Corporations--Corporations may not hold any property, except that property "proper and necessary for carrying on its legitimate business", for longer than 5 years. Ky. Rev. Stats. Ann. 271 A.705(1). A corporation may be formed for any lawful business.

LOUISIANA

Aliens--No restrictions.

Corporations--No restrictions.

MAINE

Aliens--No restrictions.

Corporations--No restrictions.

MARYLAND

Aliens--All aliens, except enemy aliens, have the same rights as citizens. Md. Ann. Code, art. 21, sec. 14-101.

Corporations--No restrictions.

MASSACHUSETTS

Aliens--No restrictions, except on inheritance.

Alien inheritance--If a beneficiary is domiciled outside of the United States, a court may in appropriate cases direct that the property or funds be used to purchase goods in the form of necessities of life to be sent to the beneficiary. Mass. Ann. Laws, c. 206, sec. 27B.

Corporations--No restrictions.

MICHIGAN

Aliens--No restrictions.

Corporations--No restrictions.

MINNESOTA

Aliens--No alien may acquire more than 90,000 square feet of land. This rule does not apply to aliens who have declared their intention to become citizens, to aliens who have acquired the property by inheritance or by distribution of the assets of a dissolved corporation, to settlers on farms of not more than 160 acres, or where a treaty grants greater rights to the alien. Minn. Stat. sec. 500.22 subd. 1.

Alien corporations--Corporations organized outside of the United States may not acquire more than 90,000 square feet of land. Minn. Stat. sec. 500.22 subd. 1.

Corporations--All corporations are prohibited from engaging in farming and from acquiring real estate capable of being used for farming, subject to some exceptions. See appendix D. Minn. Stat. sec. 500.24.

MISSISSIPPI

Aliens--Resident aliens are treated on the same basis as citizens. Nonresident aliens may not acquire or hold land, except by way of security for a debt. Citizens of Syria and Lebanon may inherit land, despite the fact that they are not residents. Miss. Code. Ann., sec. 89-1-23.

Corporations--No restrictions.

MISSOURI

Aliens--No restrictions. Mo. Rev. Stats. sec. 442.560.

Corporations--Corporations are limited to holding land necessary and proper for carrying on their legitimate businesses, but land ownership appears to be such a legitimate business. Constitution of Missouri, art. 11, sec. 5; Mo. Rev. Stats. sec. 351.385.

MONTANA

Aliens--No restrictions, except on inheritance.

Alien inheritance--Aliens resident in the United States have the same right to inherit as U.S. citizens. Aliens residing outside of the United States may inherit property (other than mining property) only if U.S. citizens have a reciprocal right to inherit in the country of their citizenship. Aliens residing outside of the United States may inherit mining property without restriction. Mont. Rev. Code Ann. sec. 91-520.

Corporations--No restrictions.

NEBRASKA

Aliens--Aliens may hold real estate within the city or village limits and within 3 miles of those limits. They may also hold leases for up to 5 years in other lands. Other alien land ownership is prohibited. Nebr. Rev. Stats. secs. 76-402, 76-414.

Alien inheritance--Resident aliens may acquire property by inheritance, but must sell it within 5 years. Any property acquired by nonresident aliens by inheritance must be sold

immediately at a judicial sale. Aliens not resident in the United States may inherit only if reciprocal inheritance rights are afforded U.S. citizens in the nation of the alien's residence. Nebr. Rev. Stats., secs. 76-405 through 76-409, 4-107.

Alien corporations--Corporations organized outside of Nebraska may hold land within city or village limits and within 3 miles of those limits. They may also hold land necessary for their business as common carriers, or public utilities, or for manufacturing plants, petroleum service stations, or bulk stations. Subject to the above exceptions, no corporation (whether organized in Nebraska, another State, or in a foreign country) may hold land if a majority of its directors are aliens, if its executive officers or managers are aliens, or if a majority of its stock is owned by aliens. Nebr. Rev. Stats. secs. 76-402 through 76-414.

Corporations--Corporations organized outside Nebraska are subject to the same restrictions as alien corporations, but corporations organized in the United States may acquire oil leases and also acquire land for related purposes. Nebr. Rev. Stats., 76-404.

NEVADA

Aliens--No restrictions.

Corporations--No restrictions.

NEW HAMPSHIRE

Aliens--An alien resident in the State has the same rights as a citizen. A nonresident alien may not hold real estate. N. H. Rev. Stats. Ann., sec. 477.20.

Corporations--No restrictions.

NEW JERSEY

Aliens--"Alien friends" have the same rights as citizens with respect to real estate. N. J. Stats. Ann. sec. 46:3--18.

Alien inheritance--A State law provides that when it appears that a beneficiary would not have the use, benefit, or control of the property due him the court may order such property to be

paid into the court and to be held by the court for the benefit of such person. N.J. Stats. Ann., sec. 3A:25-10; But see In Re Kish's Estate, 52 N.J. 454, 246 A.2d 1 (1968), limiting the finding of what "appears" to be the situation to "a routine reading of foreign laws."

Corporations--No restrictions.

NEW MEXICO

Aliens--Aliens have the same rights as citizens, with respect to real estate. N.M. Stats. Ann. sec. 70-1-24. This apparently supersedes a provision of the State constitution which prohibited ownership of land by aliens not eligible for citizenship. N.M. constitution, art. 2, sec. 23.

Corporations--No restrictions.

NEW YORK

Aliens--No restrictions.

Alien inheritance--In appropriate circumstances a court may direct that the money due a beneficiary be paid into the court for the benefit of such beneficiary or other persons who may later become entitled to it. If the beneficiary is an alien residing outside the United States, he must affirmatively prove that circumstances are not appropriate for such a holding by the court. N.Y. Surr. Court Proc. Act, sec. 2218.

Alien corporations--Corporations organized under the laws of foreign nations may hold real estate if New York corporations have a reciprocal right in the foreign nation in question. N.Y. Gen. Corp. Law, sec. 221.

Corporations--Corporations organized under the laws of other States may hold real estate only if New York corporations have a reciprocal right in the State in question. N.Y. Gen. Corp. Law, sec. 221.

NORTH CAROLINA

Aliens--Aliens may hold real estate on the same basis as citizens. N.C. Gen. Stats. sec. 64-1.

Alien inheritance--The right of a nonresident alien to inherit real estate is dependent on the existence of a reciprocal right for U.S. citizens to inherit real estate in the alien's home country. N.C. Gen. Stats. sec. 64-3.

Corporations--No restrictions.

NORTH DAKOTA

Aliens--No restrictions.

Corporations--Corporations are prohibited from engaging in farming or agriculture. See appendix D. N.D. Century Code 10-06-01.

OHIO

Aliens--No restrictions.

Corporations--No restrictions.

OKLAHOMA

Aliens--No alien may hold land unless he is a bona fide resident of the State. If a nonresident alien acquires land (e.g., by inheritance) or if a resident alien leaves the State, he must dispose of the land within 5 years. Constitution of Oklahoma, art. 22, sec. 1; Okla. Stats. sec. 60-121 through 60-123.

Alien inheritance--Aliens may inherit land, but if not residents of Oklahoma, they must dispose of it within 5 years. Okla. Stats. sec. 60-123.

Corporations--Corporations may hold land within municipal limits. Corporations may also hold land outside of municipal limits to the extent necessary for their business purposes, but landholding itself is not such a legitimate business purpose. Constitution of Oklahoma, art. 22, sec. 2; Okla. Stats., sec. 18-1.20.

Corporations may not engage in farming or ranching, except in special circumstances. See appendix D. Okla. Stats. 18-951.

OREGON

Aliens--No restrictions, except respecting public lands.

Public lands--Aliens may not buy State lands nor establish mineral claims on public lands unless they have declared their intention to become citizens. Oreg. Rev. Stats. sec. 273.255, 517.010, 517.044.

Corporations--No restrictions.

PENNSYLVANIA

Aliens--Aliens may purchase and hold real estate up to 5,000 acres or a net annual income of $20,000. Certain other statutes give special exceptions. Pa. Stats. 68, secs. 21 through 32.

Corporations--No restrictions. Pa. Stats. title 15, sec. 1302 (4) replaces title 68, sec. 21 for business corporations.

RHODE ISLAND

Aliens--No restrictions.

Corporations--No restrictions.

SOUTH CAROLINA

Aliens--No alien may own more than 500,000 acres of land. S.C.C.A. sec. 57-103.

Alien corporations--No corporation controlled by aliens may own more than 500,000 acres of land. S.C. Code Ann., sec. 57-103.

Corporations--No restrictions.

SOUTH DAKOTA

Aliens--No restrictions.

Corporations--Corporate farming is restricted. See appendix D. Acts of South Dakota, 1974, c. 294.

TENNESSEE

Aliens--No restrictions.

Corporations--No restrictions.

TEXAS

Aliens--No restrictions.

Corporations--A corporation may acquire land only if it is necessary and proper for its business. It must convey away all excess land within 15 years. A corporation may not have real estate holding as one of its purposes, except a "town lot" corporation, operating in or near a city. Vernon's Ann. Tex. Stats., art. 1302-4.01 through 1302-4.04.

UTAH

Aliens--No restrictions.

Corporations--No restrictions.

VIRGINIA

Aliens--Any nonenemy alien may acquire and hold land on the same basis as a citizen. Va. Code. Ann. sec. 55-1.

Corporations--No restrictions.

VERMONT

Aliens--No restrictions.

Corporations--No restrictions.

WASHINGTON

Aliens--No restrictions. Wash. Rev. Code sec. 64.16.005.

Corporations--No restrictions.

WEST VIRGINIA

Aliens--No restrictions.

Corporations--Corporations which acquire more than 10,000 acres of land in the State must obtain a license. A tax at the rate of 5 cents for each acre in excess of 10,000 is charged for the license. W. Va. Code Ann. sec. 11-12-75.

WISCONSIN

Aliens--Resident aliens have the same rights as citizens. Aliens resident outside of the United States may not acquire or hold more than 640 acres, except by inheritance. Constitution of Wisconsin, art. 1, sec. 15; Wis. Stats. sec. 710.01 and 710.02.

Alien inheritance--If it appears that a beneficiary will not receive his payment or will not have the opportunity to receive it, the court may order that the money be deposited in the State school fund until a proper claim is made for it. Wis. Stats., sec. 863.37.

Alien corporations--No corporation in which more than 20 percent of the stock is held by nonresident aliens may acquire or hold more than 640 acres. Wis. Stats. sec. 710.02.

Corporations--Corporate farming is restricted. See appendix D. Laws of 1973, c. 238, effective June 5, 1974.

WYOMING

Aliens--Resident aliens have the same rights as citizens. Nonresident aliens who are ineligible for U.S. citizenship may not acquire or hold property. Wyoming constitution, art. 1, sec. 29; Wyo. Stats. Ann. sec. 34-151.

Alien inheritance--Nonresident aliens may inherit property only if a reciprocal right exists for a U.S. citizen to inherit in the nation of the alien's citizenship. Wyo. Stats. Ann. sec. 2.43.1.

Corporations--No restrictions.

APPENDIX C

Major Provisions of Treaties Affecting the Right of Aliens to Own Real Estate

For each major investing nation, and a few other selected nations, this appendix indicates relevant treaty provisions relating to the ownership of land.

In each case, the name of the treaty is given, together with its date and the date it came into effect. Citations to the full text of the treaty are also given; the full text usually appears in several different series. A number preceding a citation indicates the volume in which the treaty appears; the number following a citation indicates the page (or, in the case of T.S. and T.I.A.S., the entry number). The abbreviations are:

Bevans	Treaties and Other International Agreements of the United States of America 1776-1949.
E.A.S.	Executive Agreement Series (replaced in 1945 by T.I.A.S.)
L.N.T.S.	League of Nations Treaty Series.
Malloy	Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers, 1776-1909.
Redmond	A continuation of Malloy, covering 1910-1923.
Stat.	United States Statutes-at-Large.
T.I.A.S.	Treaties and Other International Acts Series
T.S.	Treaty Series (replaced in 1945 by T.I.A.S.)
U.N.T.S.	United Nations Treaty Series

Only provisions relevant to this study are noted. Most of the treaties contain numerous other provisions protecting the rights of aliens in the United States.

Two terms require special note:

"Most-favored-nation treatment" means the most favorable treatment accorded any alien in the country. Exception is usually made for aliens from possessions or former possessions of the United States (e.g., the Philippines).

"National treatment" means that the alien is to be treated in the same manner as a citizen.

***

BELGIUM

Treaty--Treaty of Friendship, Establishment, and Navigation; signed, February 21, 1961; effective October 3, 1963. 14 U.S.T. 1283, T.I.A.S. 5432, 480 U.N.T.S. 149.

Provisions protecting aliens--Belgians and Belgian companies are to be accorded national treatment respecting commercial, industrial, financial, and other activities for gain in the United States. Companies organized under Belgian law are to be treated as Belgian companies. Belgian enterprises located in the United States are to be treated no less favorably than similar enterprises controlled by U.S. citizens. Belgians may form American companies. (Article 6.)

Special provisions relating to land--The United States reserves the right to determine the extent to which Belgians may acquire interests in or exploit land or other natural resources. (Article 6, paragraph 5.)

DENMARK

Treaty--Treaty of Friendship, Commerce, and Navigation; signed October 1, 1951; in effect July 30, 1961. 12 U.S.T. 908, T.I.A.S. 4797, 421 U.N.T.S. 105.

Provisions protecting aliens--Danes and Danish companies are to be accorded national treatment respecting commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, and religious activities. (Article 7, paragraph 1.)

Danes and Danish companies are to be accorded most-favored-nation treatment with regard to exploration for and exploitation of mineral deposits, engaging in economic and cultural activities not listed in the preceding paragraph, and in organizing and operating American companies. (Article 7, paragraph 2.)

Danes and Danish companies are specifically authorized to form American companies for the purpose of engaging in the activities listed in paragraph 1 and in mining. These companies are to

be treated on an equal basis with American companies, but the United States may impose restrictions on the nationality of the directors or managing directors of these companies. (Article 8 and minutes thereto.)

Special provisions relating to land--Danes and Danish companies are entitled to the treatment generally accorded foreigners with respect to the ownership of land, but they are entitled to hold land necessary to engage in their treaty-protected activities. (Article 9, section 3.)

Danes and Danish companies may inherit land, but may be required to dispose of it within 5 years (or more) if local law prohibits their continued ownership. (Article 9, sections 1 and 4.)

FRANCE

Treaty--Treaty of Establishment; signed, November 25, 1959; in effect December 21, 1960. 11 U.S.T. 2398, T.I.A.S. 4625, 401 U.N.T.S. 75.

Provisions protecting aliens--French citizens and companies are to be accorded national treatment respecting commercial, industrial, financial, and other activities for gain. (Article 5.)

Special provisions relating to land--French citizens and companies are to be accorded national treatment respecting the leasing of real property appropriate to their treaty-protected activities. (Article 7, paragraph 1.)

Other special provisions--The United States may decline to give the benefits of the treaty to a French company which is controlled, directly or indirectly, by citizens of a third nation.

GERMANY, FEDERAL REPUBLIC OF

Treaty--Treaty of Friendship, Commerce and Navigation; signed October 29, 1954, effective July 14, 1956. 7 U.S.T. 1839, T.I.A.S. 3593, 273 U.N.T.S. 3.

Provisions protecting aliens--Germans and German companies are to be accorded national treatment respecting all types of commercial, industrial, financial, and other activities for gain.

(Article 7, paragraph 1.)

Special provisions relating to land--The United States reserves the right to limit the extent to which aliens may acquire interests in land. (Article 7, paragraph 2.)

Note--For some purposes, the Treaty of Friendship, Commerce, and Consular Rights of December 8, 1923, is still in force, as amended in 1954. See 44 Stat. 2132, T.S. 725, 8 Bevans 153, 52 L.N.T.S. 133, for the text of the treaty, and 5 U.S.T. 1939, T.I.A.S. 3062, 253 U.N.T.S. 89, for the amendments.

IRAN

Treaty--Treaty of Amity, Economic Relations, and Consular Rights; signed August 15, 1955, effective June 16, 1957. 8 U.S.T. 899, T.I.A.S. 4581, 393 U.N.T.S. 338.

Provisions protecting aliens--Iranians may engage on a most-favored-nation basis in trade between the United States and Iran and in related commercial activities. They may also enter the United States to direct an operation in which they have invested. (Article 2.)

Special provisions relating to land--Iranians and Iranian companies may lease real estate for residence purposes or for conducting activities protected under the treaty. (Article 5, paragraph 1.)

ITALY

Treaty--Treaty of Friendship, Commerce, and Navigation; signed February 2, 1948, effective July 26, 1949. 63 Stat. 2255, T.I.A.S. 1965, 9 Bevans 261.

Provisions protecting aliens--Italians and Italian companies are entitled to national treatment with respect to engaging in commercial, manufacturing, processing, financial, scientific, educational, religious, philanthropic, and professional activities in the United States. They may acquire, own, erect, lease, and occupy appropriate buildings, and may lease appropriate lands for such purposes and for residential and mortuary purposes. (Article 1, paragraph 2.)

Special provisions relating to land--The United States reserves the right to impose restriction on alien ownership of land. (Article 7, paragraph 1.)

(2) If inheritance is prohibited by a rule restricting alien ownership, the alien is to be granted 3 years to dispose of the land. (Article 7, paragraph 2.)

KUWAIT

No treaty grants special commercial, land, or inheritance rights. A Consular Convention regulates consular relations and permits the purchase of land for consular offices. This treaty, between the United States and the United Kingdom, also applies to territories, such as Kuwait, for which the United Kingdom conducted foreign relations in 1951. 3 U.S.T. 3426, T.I.A.S. 2494, 165 U.N.T.S. 121.

JAPAN

Treaty--Treaty of Friendship, Commerce, and Navigation; signed April 2, 1953, effective October 30, 1953. 4 U.S.T. 2063, T.I.A.S. 2863, 206 U.N.T.S. 143.

Provisions protecting aliens--Japanese and Japanese companies are to be accorded national treatment respecting all types of commercial, industrial, financial, and other business activities in the United States. (Article 7, paragraph 1.)

Special provisions relating to land--The United States reserves the right to limit the extent to which aliens may acquire interests in the exploitation of land or other natural resources. (Article 7, paragraph 2.)

Japanese and Japanese companies are to be accorded national treatment respecting the leasing of land to carry on business activities protected under the treaty, but may otherwise be restricted in their ownership of land.

NETHERLANDS

Treaty--Treaty of Friendship, Commerce and Navigation; signed March 27, 1956, effective December 5, 1957. 8 U.S.T. 2043, T.I.A.S. 3942, 285 U.N.T.S. 231.

Provisions protecting aliens--Dutch citizens and Dutch companies are to be accorded national treatment respecting commercial, industrial, financial, and other activities for gain (business activities) in the United States. (Article 7, paragraph 1.)

Special provisions relating to land--The United States reserves the right to limit the extent to which aliens may acquire interests in the exploitation of land or other natural resources. (Article 7, paragraph 2.)

Dutch citizens and companies in the United States are to be accorded national treatment respecting leasing real property appropriate to the conduct of businesses protected by the treaty; otherwise their right to own real estate may be restricted by local law. (Article 9, paragraph 1.)

Dutch citizens and companies are to be accorded national treatment respecting inheritance of real estate, but they may be required to dispose of the property within a reasonable time, if local law prohibits their ownership on account of alienage. (Article 9, paragraph 4.)

NORWAY

Treaty--Treaty of Friendship, Commerce, and Consular Rights; signed June 5, 1928, and February 25, 1929, effective September 13, 1932. 47 Stat. 2135, T.S. 852, 4 Trenwith 4527, 123 L.N.T.S. 81.

Provisions protecting aliens--Norwegians in the United States are to be permitted to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind and to carry on every form of commercial activity which is not forbidden by local law. (Article 1, paragraph 1.)

Special provisions relating to land--When a Norwegian inherits land in the United States, but is disqualified from owning it on account of his alienage, he is to be allowed 3 years (to be reasonably prolonged, if necessary) to dispose of it.(Article 4, paragraph 1.)

SAUDI ARABIA

Treaty--Executive agreement; Provisional Agreement in Regard to Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation; signed November 7, 1933, effective November 7, 1933.

Provisions protecting aliens--Citizens of Saudi Arabia are entitled to be treated on a most-favored-nation basis with regard to their persons, property, rights, and interests. (Article 2.)

SPAIN

Treaty--Treaty of Friendship and General Relations; signed July 3, 1902, effective April 14, 1903. 33 Stat. 2105, T.S. 422, 2 Malloy 1701.

Special provisions relating to land--If a Spaniard inherits real estate in the United States and is forbidden to hold it on account of his alienage, he shall be given 3 years (to be reasonably prolonged, if necessary) to sell it.

SWEDEN

Treaty--Consular Convention; signed June 1, 1910 effective March 18, 1911. 37 Stat. 1479, T.S. 557, 3 Malloy 2846.

Special provisions relating to land--Swedish citizens are entitled to most-favored-nation treatment respecting the inheritance of real estate. (Article 14, paragraph 5.)

SWITZERLAND

Treaty--Treaty of Friendship, Commerce, and Extradition; signed November 25, 1850, effective December 8, 1855. 11 Stat. 587, T.S. 353, 2 Malloy 1763.

Provisions protecting aliens--Swiss citizens in the United States are entitled to manage their affairs, to exercise their profession, their industry, and their commerce. (Article 1.)

Special provisions relating to land--In States in which

foreigners are entitled to inherit or own real estate, Swiss shall be given equal treatment with citizens of the United States. In other States, in which foreigners may not inherit or own real estate, Swiss citizens who inherit or acquire such real estate are to be given a period of time in which to dispose of it. (Article 5.)

UNITED KINGDOM (also AUSTRALIA, CANADA, and NEW ZEALAND, and various British Territories)

Treaty--Convention as to Tenure and Disposition of Real and Personal Property; signed March 2, 1899, effective August 7, 1900. 31 Stat. 1939, T.S. 146, 1 Malloy 774.

Note--This treaty also applies to a number of British possessions. See list in Treaties in Force (1973) p. 257. This treaty was made applicable to Canada by special agreement, effective June 17, 1922. 42 Stat. 2147, T.S. 63, 3 Redmond 2657, 12 L.N.T.S. 425. It also applies to Australia and New Zealand, effective April 3, 1902, subject to modifications. 55 Stat. 1101, T.S. 964, 5 Bevans 140, 203 L.N.T.S. 367.

Special provisions respecting land--If a British subject inherits land in the United States, but is disqualified from holding it on account of alienage, he is entitled to a term of 3 years (to be reasonably prolonged, if necessary) to dispose of it.

APPENDIX D

Corporate Farming Statutes

This appendix sets forth a summary of the provisions of the State statutes regulating corporate activities in farming. In each instance the reader is referred to the appropriate statute for further details.

The reader should note that each statute provides for some exceptions. In some of the States there are very substantial exceptions. The exceptions are of three types. (1) Some kinds of activities, e.g., forestry, may not fall within the definition of "farming" given in the statute of a particular State. In such a case, the statute does not regulate this activity at all. (2) Some types of corporations, described in the statutes, may be permitted to engage in farming on the same basis as an individual farmer. (3) Some specialized activities, e.g., the production of seed for sale or agricultural research, although within the State's definition of "farming," may be specifically exempted from the law. In such a case, any corporation may engage in this activity.

For each State, the statutory citation and the effective date of the law are given. The State definition of prohibited farming activity (such as owning land or engaging in farming) is indicated after the heading "prohibitions." The heading "exempt corporations" indicates kinds of corporations which are exempted from the general prohibition. In some States there are several kinds of exempt corporations. The heading "other exemptions" shows other kinds of exempt activity. These are usually based on kind of activity, rather than type of corporation. Special reporting requirements are set forth under "reporting." These are in addition to the general reporting requirements placed on all corporations.

KANSAS

Statute--K.S.A. sec. 17-5901 et seq., effective July 1, 1973.

Prohibitions--Directly or indirectly engaging in agricultural or horticultural business or milking of cows for dairy purposes, as described.

Exempt corporations--Not more than 10 shareholders; all individuals, trusts for individuals, estates, etc.; the incorporators (not the stockholders) must be residents; the corporation

may not own, control, manage, or supervise more than 5,000 acres; no stockholder may be a stockholder in another such exempt corporation.

Other exemptions--Mining companies farming reclaimed strip mines are also exempt.

Reporting--Annual reports to Secretary of State are required.

MINNESOTA

Statute--Minn. Stat. sec. 500.24, effective May 20, 1973.

Prohibitions--Engaging in farming or directly or indirectly owning, acquiring, or otherwise obtaining any interest in any title to real estate used for farming or capable of being used for farming.

Exempt corporations--(1) Family farm corporation. Such a corporation must be founded for the purpose of farming and the ownership of agricultural land. A majority of the shares must be held by, and a majority of the stockholders must be, close relatives. None of the shareholders may be corporations. One of the shareholders must live on or manage the farm.

(2) Authorized farm corporation. Such a corporation must have not more than 10 shareholders, all natural persons (or estates). It may have only one class of shares. Not more than 20 percent of its gross receipts may come from rent, royalties, dividends, interest, and annuities.

Other exemptions--(1) Encumbrances.

(2) Land owned by a corporation on May 20, 1973, plus expansion by such corporations at not more than 20 percent every 5 years, plus expansion to meet pollution control requirements.

(3) Research or experimental farms.

(4) Farms operated to raise breeding stock, seed, wild rice, nursery plants, or sod.

(5) Acreage equal to acreage leased by a corporation on May 20, 1973, plus expansion by such corporation at not more than 20 percent every 5 years, plus expansion to meet pollution control requirements.

(6) Future interests given to educational, religious, or charitable nonprofit corporations.

(7) Agricultural land acquired for nonfarming purposes. Such land must be rented to a "family farm unit" (either an individual farmer or one of the exempt corporations) until it is used for such nonfarming purpose.

(8) Land acquired by foreclosure or other collection of debt, but such land must be sold within 10 years, and in the interim must be leased to a family farm or an exempt corporation.

Reporting--Annual reports to Commissioner of Agriculture.

NORTH DAKOTA

Statute--N.D.C.C. sec. 10-06-01 et. seq., effective June 29, 1932.

Prohibitions--Engaging in the business of farming or agriculture. The statute also requires divestiture of agricultural lands by corporations.

Exempt corporations--Farm cooperatives, if 75 percent of the members are actual farmers.

Other exemptions--Corporations may acquire land by foreclosure or other operation of law, but must dispose of it within 10 years.

OKLAHOMA

Statute--Okla. Stats. 18 secs. 951 through 954, effective June 24, 1971, replacing earlier law.

Prohibitions--Engaging in farming or ranching or owning any interest in land to be used in farming or ranching.

Exempt Corporations--There may be not more than 10 shareholders, not counting close relatives. They must be either natural persons or estates. (Trustees must be either natural persons or Oklahoma banks or trust companies.) Not more than 20 percent of the gross revenue of the company may come from sources other than farming, ranching, and mineral royalties.

Other exemptions--(1) Corporations engaged in canning, food processing, or frozen food processing.

(2) Research and feeding operations.

(3) Property acquired before June 1, 1971.

Reporting--None.

SOUTH DAKOTA

Statute--Laws, 1974, c. 294, effective July 1, 1974.

Prohibitions--Engaging in farming or directly or indirectly owning, acquiring, or otherwise obtaining an interest in any real estate used for farming or capable of being used for farming.

Exempt corporations--(1) Family farm corporation. Such a corporation must be founded for the purpose of farming and the ownership of agricultural land. A majority of the voting stock must be held by the majority of the stockholders who are close relatives. At least one stockholder must reside on or actively operate the farm.

(2) Authorized farm corporation. Such a corporation must have no more than 10 shareholders, all natural persons or estates. The shares must be of one class. Not more than 20 percent of the gross receipts may come from rent, royalties, dividends, interest, and annuities.

(3) Banks and trust companies.

Other exemptions--(1) Encumbrances.

(2) Land owned by a corporation on July 1, 1974, plus expansion by such corporations at not more than 20 percent every 5 years.

(3) Research or experimental farms.

(4) Farms operated to raise breeding stock, seed, nursery plants, or sod.

(5) Acreage equal to acreage leased by a corporation on July 1, 1974, plus expansion by such corporation at not more than 20 percent every 5 years.

(6) Gifts to South Dakota nonprofit corporations.

(7) Agricultural land acquired for nonfarm purposes. Such

land must be rented to a family farm unit or an exempt corporation until it is actually used for such nonfarm purposes.

(8) Land acquired by foreclosure or other collection of debt, but such land must be leased to a family farm unit during and must be sold within 10 years.

(9) Land acquired for the purpose of feeding livestock.

Reporting--Annual reports to Secretary of State.

WISCONSIN

Statute--Laws of 1973, c. 238, effective June 5, 1974; this section will become section 182.001 of the statutes.

Prohibitions--Owning land on which to carry on farming operations or carrying on farming operations.

Exempt corporations--A corporation with not more than 15 shareholders (counting all lineal ancestors and descendants and aunts, uncles, and first cousins as one person, no matter how many there are) all of whom are natural persons (or their estates), with not more than two classes of shares.

Other exemptions--(1) Land acquired by inheritance or by foreclosure or debt collection, but such land must be sold within 5 years.

(2) Small business investment corporations, and corporations acting as fiduciary or trustee for individuals or charities.

(3) Land owned by a corporation on June 5, 1974, together with expansion at the rate of 20 percent in any 5-year period, plus expansion to meet pollution control requirements.

(4) Research farms, and those involved in breeding operations or the production of seed.

(5) Land acquired for other business purposes, if leased to a family farm or a qualified corporation.

(6) Farming incidental to another business purpose.

Reporting--No special reports.